HOUSE BILL NO. 332

INTRODUCED BY

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING INDIVIDUAL LICENSURE FOR LAWFUL POSSESSION OF A FIREARM FOR THE PURPOSES OF THE FEDERAL GUN-FREE SCHOOL ZONES ACT OF 1990."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Establishment of individual licensure.** In consideration that the right to keep and bear arms is protected and reserved to the people in Article II, section 12, of the Montana constitution, a person who has not been convicted of a violent, felony crime and who is lawfully able to own or to possess a firearm under the Montana constitution is considered to be individually licensed and verified by the state of Montana within the meaning of the provisions regarding individual licensure and verification in the federal Gun-Free School Zones Act of 1990.

NEW SECTION. **Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 45, and the provisions of Title 45 apply to [section 1].

-END-

HB 332
INTRODUCED BILL

APPROVED BY COM
ON JUDICIARY

BILL NO. 332

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-END-

HB 332
SECOND READING

BILL NO. 332

INTRODUCED BY

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NEW SECTION. **Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 45, and the provisions of Title 45 apply to [section 1].

-END-

HB 332
THIRD READING

HOUSE BILL NO. 332

INTRODUCED BY CLARK, JORE, BARNETT, SOFT, BAER, MOLNAR, STANG, FUCHS, COLE, ORR, KNOX, BRAINARD, MASOLO, MCGEE, SIMPKINS, KEATING, KITZENBERG, SIMON, SOMERVILLE, FOSTER, TREXLER, L. SMITH

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING INDIVIDUAL LICENSURE FOR LAWFUL POSSESSION OF A FIREARM FOR THE PURPOSES OF THE FEDERAL GUN-FREE SCHOOL ZONES ACT OF 1990."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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NEW SECTION. **Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 45, and the provisions of Title 45 apply to [section 1].

-END-

1/25	FIRST READING		
1/25	REFERRED TO JUDICIARY		
2/07	HEARING		
2/13	COMMITTEE REPORT—BILL PASSED		
2/15	2ND READING PASSED	94	3
2/16	3RD READING PASSED	98	2
	TRANSMITTED TO SENATE		
2/21	FIRST READING		
2/21	REFERRED TO JUDICIARY		
3/17	HEARING		
3/21	COMMITTEE REPORT—BILL CONCURRED		
3/25	2ND READING CONCURRED	48	0
3/27	3RD READING CONCURRED	47	2
	RETURNED TO HOUSE		
3/28	SIGNED BY SPEAKER		
3/28	SIGNED BY PRESIDENT		
3/29	TRANSMITTED TO GOVERNOR		
4/03	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 317		
	EFFECTIVE DATE: 10/01/95		

HB 333 INTRODUCED BY KASTEN, ET AL.

REPEAL MATTRESS REGULATION LAWS

BY REQUEST OF THE JOINT SUBCOMMITTEE ON HEALTH & HUMAN SERVICES

1/25	INTRODUCED		
1/25	FIRST READING		
1/25	REFERRED TO HUMAN SERVICES & AGING		
1/26	FISCAL NOTE REQUESTED		
1/27	FISCAL NOTE RECEIVED		
1/28	FISCAL NOTE PRINTED		
1/30	HEARING		
1/31	COMMITTEE REPORT—BILL PASSED		
1/31	PLACED ON CONSENT CALENDAR		
2/02	3RD READING PASSED	97	0
	TRANSMITTED TO SENATE		
2/03	FIRST READING		
2/03	REFERRED TO PUBLIC HEALTH, WELFARE & SAFETY		
3/01	HEARING		
3/03	COMMITTEE REPORT—BILL CONCURRED		
3/08	2ND READING CONCURRED	48	0
3/09	3RD READING CONCURRED	46	1
	RETURNED TO HOUSE		
3/11	SIGNED BY SPEAKER		
3/15	SIGNED BY PRESIDENT		
3/17	TRANSMITTED TO GOVERNOR		
3/21	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 181		
	EFFECTIVE DATE: 07/01/95		

HB 334 INTRODUCED BY KASTEN, ET AL.

ELIMINATE REGULATION OF FLOUR AND BREAD BY DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES

BY REQUEST OF THE JOINT SUBCOMMITTEE ON HEALTH & HUMAN SERVICES

1/25	INTRODUCED
1/25	FIRST READING

1/25	REFERRED TO HUMAN SERVICES & AGING		
1/26	FISCAL NOTE REQUESTED		
1/30	HEARING		
1/30	FISCAL NOTE RECEIVED		
1/30	FISCAL NOTE PRINTED		
1/31	COMMITTEE REPORT—BILL PASSED		
1/31	PLACED ON CONSENT CALENDAR		
2/02	3RD READING PASSED	95	1
	TRANSMITTED TO SENATE		
2/03	FIRST READING		
2/03	REFERRED TO PUBLIC HEALTH, WELFARE & SAFETY		
3/01	HEARING		
3/03	COMMITTEE REPORT—BILL CONCURRED		
3/08	2ND READING CONCURRED	48	0
3/09	3RD READING CONCURRED	45	2
	RETURNED TO HOUSE		
3/11	SIGNED BY SPEAKER		
3/15	SIGNED BY PRESIDENT		
3/17	TRANSMITTED TO GOVERNOR		
3/21	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 182		
	EFFECTIVE DATE: 07/01/95		

HB 335 INTRODUCED BY SQUIRES, ET AL.

CREATE THE MONTANA WHEELCHAIR WARRANTY ACT

1/25	INTRODUCED		
1/25	FIRST READING		
1/25	REFERRED TO HUMAN SERVICES & AGING		
2/01	HEARING		
2/10	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/11	2ND READING PASSED	87	8
2/13	3RD READING PASSED	86	11
	TRANSMITTED TO SENATE		
2/20	FIRST READING		
2/20	REFERRED TO BUSINESS & INDUSTRY		
3/14	HEARING		
3/15	COMMITTEE REPORT—BILL CONCURRED		
3/18	2ND READING CONCURRED	45	1
3/20	3RD READING CONCURRED	45	5
	RETURNED TO HOUSE		
3/21	SIGNED BY SPEAKER		
3/22	SIGNED BY PRESIDENT		
3/23	TRANSMITTED TO GOVERNOR		
3/28	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 259		
	EFFECTIVE DATE: 10/01/95		

HB 336 INTRODUCED BY BARNETT

EXEMPT PERSONS WHO EXECUTE ONLY SURETY BAIL BONDS FROM CONTINUING EDUCATION REQUIREMENTS

1/25	INTRODUCED		
1/25	FIRST READING		
1/25	REFERRED TO BUSINESS & LABOR		
1/31	HEARING		
2/01	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/03	2ND READING PASSED	91	5
2/04	3RD READING PASSED	92	3

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN BOB CLARK**, on February 7, 1995, at 7:00 AM.

ROLL CALL

Members Present:

Rep. Robert C. Clark, Chairman (R)
Rep. Shiell Anderson, Vice Chairman (Majority) (R)
Rep. Diana E. Wyatt, Vice Chairman (Minority) (D)
Rep. Chris Ahner (R)
Rep. Ellen Bergman (R)
Rep. William E. Boharski (R)
Rep. Bill Carey (D)
Rep. Aubyn A. Curtiss (R)
Rep. Duane Grimes (R)
Rep. Joan Hurdle (D)
Rep. Deb Kottel (D)
Rep. Linda McCulloch (D)
Rep. Daniel W. McGee (R)
Rep. Brad Molnar (R)
Rep. Debbie Shea (D)
Rep. Liz Smith (R)
Rep. Loren L. Soft (R)
Rep. Bill Tash (R)
Rep. Cliff Trexler (R)

Members Excused: NONE

Members Absent: NONE

Staff Present: John MacMaster, Legislative Council
Joanne Gunderson, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: SB 90, HB 258, HB 323, HB 332
Executive Action: HB 65 DO PASS AS AMENDED

{Tape: 1; Side: A; Comments: Side A of this tape is recorded on 4.8 speed.}

EXECUTIVE ACTION ON HB 65

Motion: **REP. DUANE GRIMES MOVED HB 65 DO PASS.**

Discussion: **REP. DANIEL MC GEE** said he could not discern the fiscal logic in closing the facility. He could not determine why a $10 million, 110-bed facility would be built at Boulder to replace a 185-person bed facility. He had visited the community-based home and found they were getting excellent care. He felt the committee was not being told the whole story.

REP. LOREN SOFT described his experience in a similar program for over 30 years and he believed the process for weighing the various aspects and options presented were analogous to this proposal. Then he reviewed the history behind this bill and the decision-making process. He outlined the difficulty of the committee in making a determination based on limited time and information. He felt that they should not be bringing the decision to the legislature but rather should be using the process he outlined in his experience where the people involved weigh, discuss and decide based on their experience and more extensive information to arrive at what is best for the people being served in the facility.

REP. JOAN HURDLE spoke from the perspective of a special educator and cautioned against saying there was only one proper way to serve people. She agreed with **REP. SOFT** that it was strange that there was such a demand to close the facility at all. She wondered why those people are in the care of the Department of Corrections and Human Services (DCHS). She felt that the emphasis should be on examining all the human service-type departments in reorganization rather than on education. She could not support closing Eastmont with that much need for those kinds of facilities.

REP. ELLEN BERGMAN said those who were proponents of the facility being closed kept saying, "they prefer the least restricted...." and did not know what that meant. She could not tell what was restrictive about the facility, nor could she say it seemed much like an institution when she visited it. She felt they would lose many advantages by going to a group-home concept of care. Further, she was concerned about uprooting the residents.

REP. DEB KOTTEL was generally perplexed but remembered the testimony that said there are 70 people who have been identified between both institutions as inappropriately institutionalized. She said she remembered that there would likely be a lawsuit case against the state because of that. A problem is that there are no community-based programs to put those 70 people in because of the lack of funding. She thought the rationale behind it was that they don't have more money going in to set up the community-

based programs, the people stay in the institutions, the threatened lawsuit comes, the state fights the lawsuit. It would cost a great deal, they'd probably lose the suit, be ordered by the court to de-institutionalize those people into community settings and then be back at the beginning. She understood that the idea was to take the money saved from that to build the community facility, put the 70 inappropriately institutionalized people into those community settings, move those who cannot be institutionalized from Eastmont to Boulder, leaving those institutions in place and the net-net would still be the same. This would avoid the lawsuit against the department for not putting those people in the least restrictive setting. If that were true, she felt the responsible thing to do would be to transfer the dollars and set up a community program.

REP. BILL CAREY reviewed a fact sheet from the Governor's Human Services Subcabinet's Interagency Task Force on Developmental Disabilities. It seemed to him that they made a strong case for the Eastmont closure while freely admitting that Eastmont is an excellent institution. It states that, "if implemented, it would re-allocate over $3 million from a service without a waiting list to a set of _____ (inaudible) [which] many Montanans are seeking out and waiting for." It states that the institutional model is the issue. Apparently people are not signing up to get into the institution, but waiting to get into community-based services. In looking at where to put the money, he thought they were forced to look at where the people affected want it. That was the issue for him.

REP. BILL TASH referred to his notes and the concern about litigation. He felt that many of their decisions were running scared in the event of a lawsuit. He felt that made it very difficult to make decisions and that their decisions should be based on what is right or wrong, rather than on what they might predict could happen. He had noted that in testimony the question was asked what effect the Eihler decision would have in the event Eastmont was closed. The answer was that it wouldn't affect the decision. In regard to threats of lawsuits and constitutionality, he thought those things should be left up to the people in the department or in the Attorney General's office to sort out.

REP. LIZ SMITH had concluded that Eastmont had more federal matching funds and so Eastmont wasn't as costly to the state as group homes would be. Another hang up was that the only way to be committed to Eastmont was by court order. By just addressing group homes, choices and opportunities were being limited. There was agreement that the quality of care was excellent at Eastmont. She felt they needed to be most responsible for those who have no families or have no alternative and should change the commitment criteria and allow it to not be just by court order.

REP. HURDLE asked the committee to look at page 8, line 19 where residential facility, meaning the Montana Developmental Center and Eastmont Human Services Center, is crossed off. Then she asked them to go to page 7, lines 5 - 9, where it says, "community-based facilities." Her point was that because Glendive is an isolated place and because they house fewer than 50 people, it would be possible to make a case for the fact that a community-based facility could mean services that are available for the evaluation, treatment and rehabilitation in a community setting or in an isolated community facility housing fewer than 50 persons.

Motion: REP. HURDLE MOVED TO AMEND HB 65 TO ADD ON LINE 7, PAGE 2, "OR IN AN ISOLATED AREA OF MONTANA, A FACILITY HOUSING FEWER THAN 50 PERSONS."

{Tape: 1; Side: B; Comments: Side B is recorded at 2.4 speed.}

REP. BRAD MOLNAR suggested rather than closing Eastmont making it one of the chain of community-based operations.

REP. GRIMES said they might as well vote the bill down if they were going to start tinkering with the department's study, which this amendment would do. Ultimately he felt what they were deciding was to take the same dollars and redistribute them in order to provide for the same number, and eventually more people, with those same dollars in community-based services. He said the amendment would take the reallocation and put it back the way it was. He opposed the amendment, but supported the bill.

Vote: The motion to amend HB 65 failed by voice vote.

REP. WILLIAM BOHARSKI requested the amount it would cost to build a group home and what the operating cost for one year would be and how many it would serve.

CHAIRMAN CLARK said the construction cost was $330,000 and the operating cost was $342,000 which would serve six to eight people.

REP. DEBBIE SHEA suggested that the committee examine the impact on the lives of the people who live there. She wondered how many would not survive the transition. She said they should be concerned about the impact on jobs in the area, and there was no way she could support it.

REP. KOTTEL reiterated previous testimony about the 70 inappropriately institutionalized people according to the decision of the psychologists and caretakers. Those people are distributed between Boulder and Eastmont. Eighteen of those have been designated for group homes and the other 52 remain inappropriately institutionalized. She said if the committee voted it down, they needed to come up with the money to put them in group homes and the money is not there. She said if they vote

it up, the money from Eastmont is channelled to group homes and the 52 people are transferred. The ones who cannot go into group homes would go to Boulder. She said she had to have faith in the people who made the decision.

REP. BERGMAN asked what inappropriately institutionalized meant.

REP. KOTTEL replied that it referred to those who can function outside the institution in volunteer-style jobs in the community. The institution is too highly restrictive for those people.

REP. BERGMAN said that was just not true. She had been there and the overwhelming majority at Eastmont, in her opinion, were really not those who can be taught. From what she saw, the most they can handle is stuffing envelopes and make their beds, but they are not able to go into the community to hold jobs.

REP. KOTTEL said her understanding was that between the two institutions there are 70 individuals who can be out in the community. She said they should heed the recommendations of the professionals who have made that decision.

REP. BERGMAN objected to taking everybody's recommendations which don't really make sense to the "rest of us" and felt they should not assume their word for it is accurate.

REP. HURDLE said the same people who had made this decision just spent $10 million to make a smaller institution with fewer beds. She said it looked to her as if it had more to do with their plans for the facility than their concern about the people.

REP. KOTTEL said those were federal funds and the decisions were made because of federal and legal restraints having to do with the condition of the other facility, so it sounded to her as if they were making rational decisions. They are downsizing the institution so that the people who are inappropriately institutionalized would go out to community-based living. She did not see inconsistency in the decision, but a fairly consistent chain of decisions leading in this direction.

REP. HURDLE was concerned about the numbers of people on the waiting list while they are downsizing one facility and eliminating another one.

REP. KOTTEL said the people on the list were waiting for community-based services. There were none on the waiting list for institutional services.

REP. HURDLE said she did not understand why that would be and believed there was more to it than they knew.

REP. MC GEE said the law was changed in 1991 to redefine the developmental problem issue and that was the point. The report stated that there is nothing wrong with Eastmont, but that the

institutional model was the issue. He continued to quote from the report to explain the reasons behind the proposal in HB 65.

REP. CURTISS asked if the 70 people are all developmentally disabled (DD) or whether some of them were in the corrections system.

REP. KOTTEL responded that none of them were in the corrections system, some might be dually diagnosed in terms of being DD with mental illness layovers.

REP. SOFT remembered from testimony that there would be no long-haul savings on it, the cost to build group homes and maintain them would be about the same. There was a $1.3 million closure cost. With regard to the funding, Eastmont is a Medicaid-certified facility so most of the cost associated with a group home is not quite the same. The drain in the general fund is nearly the same.

REP. KOTTEL recalled that it was the staff in both facilities who identified those who were inappropriately placed reinforcing the professional opinion that those people needed community settings.

REP. BERGMAN asked what those people would be doing.

REP. KOTTEL replied that they would be working in smaller settings involved in community projects such as Easter Seals. They would be living in smaller groups developing family-style relationships.

REP. SMITH saw it as cost-shifting rather than cost-saving. She asked **Mr. MacMaster** to research the change of law in 1991. In her view, when a court commitment is made for a person to be institutionalized, there is no choice or flexibility. But she felt that people on the waiting list could be put in Eastmont.

Mr. MacMaster was not familiar enough with the reference in the report and would have to research it.

REP. CHRIS AHNER expressed concern about uprooting the people from one institutional setting to another. She pointed out that the need would be $4,500,000 to build the homes for the people on the waiting list. She asked **REP. SOFT** to recall what the experience of local groups homes was in reference to families visiting the residents in that setting.

REP. SOFT said there were a few who received regular family visits and there were others who did not. There did not seem to be more visits to people in group home settings than in institutions.

REP. AHNER recalled the numbers from testimony. She said that demonstrated that their families become the ones they live and

work with rather than their natural families. Therefore, she felt this would have a negative affect on them personally.

REP. MOLNAR asked if there was any testimony to demonstrate if the money was used to build the group homes that there would be enough to handle the population. There was consensus on the committee that there would not be enough and that there would continue to be a waiting list for the group homes. He then wanted to know what they would do with the people once Eastmont was closed.

REP. BOHARSKI pulled from his experience as a disabled person and said that the thought of community-based services sounded like a good idea, but it is not always realistic. He expounded on the benefits of a facility such as Eastmont. His suggestion was that they take the $1.3 million to build and staff a few group homes and keep Eastmont operational. He did not think just saying someone was placed inappropriately was good enough. He felt the facility had demonstrated that it had a place in the continuum of care and the proposal was premature and that the bill should be tabled while further study was made of the situation.

CHAIRMAN CLARK pointed out that the committee was moving into the time for hearing of other bills and postponed further action on HB 65.

{Tape: 1; Side: B; Approx. Counter: 35.9}

HEARING ON HB 323

Opening Statement by Sponsor:

REP. WILLIAM RYAN, HD 44, presented HB 323 which enables a person who has a concealed weapon permit to purchase firearms without going through a five-day waiting period. This would save time and paperwork since those people would already have gone through a background check and scrutiny in applying for their concealed weapons permit.

Proponents' Testimony:

Alfred "Bud" Elwell, Weapons Collectors Society of Montana and Northwest Arms Collectors, said the bill was brought because of hardships in the gun shows which came about when Judge Loble declared the Brady bill unconstitutional because it was an unfunded mandate. He believed this was to avoid a greater conflict with the Tenth Amendment. He said the waiting period was changed to a cooling off period, but he agreed that the people wanting to purchase a firearm had already been so thoroughly scrutinized in applying for and receiving the concealed weapons permit that they go far beyond the Brady concept.

Gary Marbut, Montana Shooting Sports Association, Gun Owners of America, National Citizen's Committee for the Right to Keep and Bear Arms, Western Montana Fish and Game Association and Big Sky Practical Shooting Club of Montana, supported this bill as a useful and effective measure. People who undergo background checks for concealed weapons permits go through much more thorough scrutiny than what is required or done under the Brady five-day waiting period. Federal courts have ruled that the requirement for a background check is an unconstitutional infringement on the prerogatives of the state. He said they felt that this bill was good public policy and consistent with the intent of Brady. They felt it would be functional to delete the requirement that a person get a letter from the sheriff. Once they have a permit with a picture ID, that should be sufficient.

Sheriff Chuck O'Reilly, Lewis and Clark County, Montana Sheriffs and Peace Officers Association, submitted written testimony and proposed amendments to eliminate the need for a letter waiving the five-day waiting period. **EXHIBITS 1 and 2**

William D. Hollenbaugh rose in support of HB 323.

Opponents' Testimony:

None

Questions From Committee Members and Responses:

REP. MC GEE asked the sponsor if he followed and approved of the amendments proposed by **Sheriff O'Reilly.**

REP. RYAN accepted the amendments.

Closing by Sponsor:

REP. RYAN closed.

HEARING ON HB 258

Opening Statement by Sponsor:

REP. JOHN BOHLINGER, HD 14, presented historical background for HB 258. He was re-proposing the bill because of an increase in incidents in Montana involving weapons on school grounds. This bill would make it a criminal offense for a person to possess, carry or store a concealed weapon on school property or for a parent, custodian or guardian to purposely or knowingly allow a minor to carry or store a concealed weapon on school property. He drew a contrast between this bill and one brought by **REP. SHEA** which provided only for expulsions of those carrying firearms and thereby bringing Montana into compliance with federal law. He felt they needed a definition beyond firearms. He also believed

that the federal requirement under the Gun Free School Act fell short in holding parents responsible and involved.

The sponsor read a letter from the Attorney General's office in support of HB 258. **EXHIBIT 3**

Proponents' Testimony:

Dennis Paxinos, Yellowstone County Attorney, told of the increase in drug traffic and weapons traffic in the public schools. In using dogs to detect the presence of drugs on school property, when a weapon is also found, there is no legal action taken because presently it is not a crime in Montana to possess a weapon on school property. From a law enforcement officer's point of view, there are problems in that the previous bill as proposed by the Governor only provides for coming into compliance with the federal crime bill. The only penalty in that bill is that school boards must put a suspension in effect for a one-year period if a student possessed a weapon on the school grounds. It is an administrative solution and satisfies the federal mandate so the school can receive federal reimbursement and grants. Suspension will not solve the problem because the student can return to the school grounds and continue other activities such as selling drugs while carrying a weapon. From an administrative point of view, they can be expelled, but from a law enforcement point of view, there is no way to monitor them once they are expelled unless there is a penalty provision. The sole purpose of this bill is to provide that penalty provision. He felt the bill had a problem in the fact that it applied to all persons, not just minors.

{Tape: 2; Side: A}

Mary Ellerd, Montana Juvenile Probation Officers Association, strongly supported this bill. The portion of the bill which also makes parents accountable is especially attractive to them.

W. James Kembel, City of Billings, went on record in support of HB 258.

Jim Foster, Montana Rural Education Association, supported the legislation. They requested that the word, "concealed," be struck from line 22.

Loren Frazier, School Administrators, supported the legislation which would make schools safer. He felt it did not alleviate the problems, but would help law enforcement dealing with people who bring weapons to school grounds.

Christine Kaufmann, Human Rights Network, supported the bill.

Michael Keedy, Montana School Boards Association, spoke in favor of this legislation. They proposed an amendment on line 15 following the word, "person," insert "is under the age of 21 and"

to address concerns that the gun control measure is over-broad and would address people who are not really the subject of this legislation.

Opponents' Testimony:

Gary Marbut, Montana Shooting Sports Association, Gun Owners of America, National Citizen's Committee for the Right to Keep and Bear Arms, Western Montana Fish and Game Association and Big Sky Practical Shooting Club of Montana, rose in opposition with reluctance because they believe kids should not take guns to school except for hunter safety training or gun safety training. They also believe law enforcement should be equipped with tools to deal with kids who take guns to school. Their opposition lies in their belief that it is unnecessary since there are already laws making it a crime for a child to carry concealed weapons to school under 45-8-3.., MCA. It is unlawful to carry a concealed weapon without a permit and a permit is not issued to persons under 18 years of age. He cited the federal Gun Free Schools Act as another law under which a child can be prosecuted requiring a one-year expulsion penalty.

He also felt problems exist with the bill also making it a crime for someone to store a concealed weapon in school. Since concealed weapon is defined as being partially or wholly covered by clothing, if the bill were enacted it would not allow for punishment of anyone for having a firearm in a locker. They were also concerned about holding parents criminally liable for acts of their children. To be consistent in public policy, the holding of parents liable would have to extend to illegal possession of drugs or alcohol and he believed it would be inconsistent to restrict their liability to this one crime.

Alfred "Bud" Elwell, Weapons Collectors Society of Montana and Northwest Arms Collectors, stated that despite his concern for his child's safety, he felt that this bill would say that it is against the law to break the law. He felt it was more appropriate to encourage courts to enforce the laws already on the books.

William Hollenbaugh was opposed to the bill, not because of lack of parental responsibility or lack of agreement that there should not be guns in schools, but because it goes too far in criminal penalties for parents.

Questions From Committee Members and Responses:

REP. TASH asked if there were distance parameters in the bill the sponsor had submitted to the previous legislature.

REP. BOHLINGER said there was no language that spoke of distance in the previous bill. The only reference might have been that it said, "if a person purposely, knowingly or negligently allowed a

student to carry or store in the school or on the school grounds without the consent of the administration...."

REP. TASH asked if the sponsor would be amenable to the suggested amendments to delete concealed weapons.

REP. BOHLINGER addressed both previously suggested amendments. Both would be considered friendly amendments.

REP. SHEA spoke in favor of the bill but asked for clarification regarding how the bill addressed weapons stored in a locker and asked if there wasn't a law on the books concerning anyone licensed having a gun in a state building as being a crime.

Mr. Paxinos said there are a number of statutes in the code and cited 45-8-328, MCA. He said the problem comes with the definition of carrying the weapon on their person which does not cover having it placed in the locker.

REP. SHEA also clarified with **Mr. Paxinos** that this code doesn't tie in with the broader definition of weapons.

REP. CLIFF TREXLER asked why there was no application of responsibility to teachers, superintendents, or principals in the school who might observe such a situation on lines 17-18 where custodians, guardians and parents are included. He wanted to know why it should not include all persons.

REP. BOHLINGER clarified that "custodian" was applicable as the custodian of the child [rather than an employee of the school]. However, he felt the concern to cover all persons was valid though the primary responsibility rested at home.

REP. MOLNAR referred to 45-8-316, MCA, which includes enumerated deadly weapons. Since this code covers the weapons, he said that the crux of the bill points to the parental responsibility. He was concerned that parents probably would not know the child was carrying a concealed weapon and would not knowingly send them to school with one.

REP. BOHLINGER cited the case of a parent who encouraged her child to protect himself with a weapon and instructed him in its use.

REP. MOLNAR asked if the gun which was used in the incident in Butte was a concealed weapon.

REP. BOHLINGER said he did not mean to imply that had this bill passed in the previous session, schools would have been made safe. But he felt that it is a step toward making schools safer.

REP. MOLNAR asked the sponsor if he would agree that it is already illegal for a child to carry a concealed weapon and that

the bill basically set the crime as a misdemeanor while under current law it is a felony.

REP. BOHLINGER agreed there was existing legislation which speaks to the carrying of weapons and deals with the crime of using those weapons. What is lacking is enabling legislation as far as the county attorneys are concerned which would help bring prosecution.

REP. MOLNAR asked if a parent knew their child was wearing an item which could be used as a weapon, but did not know what the item was or that it could be used as a weapon, would that parent be liable under this law.

REP. BOHLINGER said that the bill did not contemplate holding a parent liable if they did not know the item was a weapon.

REP. SHEA gave an example from personal experience to support the intent of the bill as it related to parental responsibility.

REP. SMITH and **REP. BOHLINGER** discussed the responsibilities foster parents might have with children in this regard and that the bill provides for at least some inquiry into those issues.

CHAIRMAN CLARK asked the sponsor if he was concerned that the way concealed weapons were treated in the bill would change the way the law currently defines them.

REP. BOHLINGER read 45-8-315, MCA, and addressed the concerns of the Yellowstone County Attorney about the inability of law enforcement to deal with a student who brought a weapon to school, stored it in his locker and then went on selling drugs. Under current law there is no way to prosecute this student for having the weapon, but only for selling drugs.

CHAIRMAN CLARK asked the sponsor to clarify the line which refers to storing a weapon.

REP. BOHLINGER said that would refer to placing the weapon in their locker or some hiding place.

CHAIRMAN CLARK said that once the child takes the weapon out from under clothing used to conceal it, it is no longer considered a concealed weapon. He asked if this bill would change the concealed-, carry-weapons law to include lockers or other storage places.

REP. BOHLINGER said he felt the definition should be expanded for school safety. He said that the language under HB 258 would make it easier for county attorneys to prosecute.

CHAIRMAN CLARK referred to testimony about three incidents in Yellowstone County and asked **Mr. Paxinos** how he responded to those cases.

Mr. Paxinos said they were transferred into a youth court and subsequently placed with a probation officer, one went to Pine Hills School. One was charged with felony assault and one was charged with discharging firearms within the city limits. One who was caught with a sawed off rifle on the school grounds was tried for possession of drugs and was placed in Pine Hills and later put on probation.

CHAIRMAN CLARK asked why that individual was not charged under the concealed weapons law as it is currently written.

Mr. Paxinos said that he could have been charged with that, but the officer at the time did not. He understood that the juvenile was on the grounds, but not in the school building.

CHAIRMAN CLARK asked how long the weapon was.

Mr. Paxinos said it was one to two inches longer than the legal definition of "sawed off."

CHAIRMAN CLARK asked, "That would have been a federal offense, correct?" (Meaning that had it fit the definition, he could have been charged with a federal offense.)

Mr. Paxinos said he could have been charged with one, but they have a problem prosecuting those cases.

CHAIRMAN CLARK asked how many students they had contact with for carrying guns or other weapons to school were drug dealers.

Mr. Paxinos said they had no records of kids carrying guns in school. They have innuendo and rumor, but no evidence. They have a small minority of students, 20 - 50, who deal in drugs in each school.

CHAIRMAN CLARK asked if all of the students who carry weapons are doing so because of drug dealing, or were some carrying weapons for self protection.

Mr. Paxinos said he did not have a numerical breakdown, but they have a group of people who are afraid who carry guns for their own protection.

CHAIRMAN CLARK asked if a student carried a hunting knife in a sheath on his belt to school and put it in his locker, would he be covered under this bill.

Mr. Paxinos requested that the sponsor remove the word, "concealed" from the bill. He believed that no weapons should be brought to the school grounds, concealed or unconcealed. He agreed that there would be a ripple effect if they tried to broaden the bill.

CHAIRMAN CLARK recalled a telephone call with **Mr. Paxinos** when they discussed the Gun Free Schools Act. He said that he had talked to the U. S. Attorney's office about why they were not prosecuting students under that act and was told that they were referring those cases to the county attorney. He recalled **Mr. Paxinos** saying that he referred the cases to the schools. He asked if he would continue that policy if this bill passed.

Mr. Paxinos said the purpose of this bill was to allow prosecutors and youth probation officers and youth court judges to deal with those problems where right now prosecutors cannot do any more than help the schools. There is no criminal offense in place. There may be a federal offense, but that involves federal jurisdiction.

{Tape: 2; Side: B}

CHAIRMAN CLARK said 45-8-316, MCA, covers every person who carries or bears concealed weapons as liable for prosecution. He asked why a student, who is a person, is not being prosecuted under that statute.

Mr. Paxinos said the problem was that when they bring them in a backpack, that is not considered carrying a concealed weapon. It is difficult to make that arrest in and of itself; it is usually because of an arrest for some other type of offense. The purpose of the statute is to prevent the carrying of weapons onto school property and the only way they will find them is by a student telling them or while searching for drugs in a locker. This would provide the mechanism for getting them into the youth court system. With drugs in lockers, the problem is the denial by the owner of the locker and the difficulty in lifting fingerprints from those. But fingerprints on a weapon are easier to establish.

CHAIRMAN CLARK asked if another student's prints are on the weapon, would he also be liable for prosecution even if it wasn't in his locker.

Mr. Paxinos said that would have to be established on a fact-by-fact basis.

REP. SHEA asked **Mr. Marbut** to validate her statement that they were all moving in the same direction to prevent kids from killing kids and that they all needed to put aside personal agendas and work together toward that end.

Mr. Marbut said that was a valid statement. He said that because he is concerned about safety in schools that would not mean he would accept lightly another law to control guns being layered on top of many laws which are already on the books designed to control guns. He felt there is sufficient authority in the law to deal with this problem.

REP. SHEA asked him if he would work together with the committee while putting aside personal interests to make schools safe for kids.

Mr. Marbut said, "Absolutely, there is no limit to my concern for gun safety. However, I wouldn't want that construed as indicating support for this particular bill. But, yes, in any form, in any circumstances, I would be glad to participate in working toward safety in the schools."

Closing by Sponsor:

REP. BOHLINGER said he had learned some things from the hearing that could help make it a better bill. He reiterated that what was said in testimony, "kids need to feel safe in school." Under present laws they don't feel safe. He said the concern was for weapons, which don't have to be concealed and suggested that an amendment strike "concealed" from the language of the bill. He summarized the intent of the bill.

CHAIRMAN CLARK relinquished the chair to **VICE CHAIR DIANA WYATT.**

HEARING ON HB 332

Opening Statement by Sponsor:

REP. BOB CLARK, HD 8, presented HB 332 to the committee. This bill was also heard in the last session and tabled at that time. He was presenting it again for consideration. It is an attempt to circumvent the Gun Free School Zones Act of 1990 for the legitimate law abiding citizens of Montana. The provisions of this act and its definitions are demonstrated in **EXHIBIT 4.**

In HB 332 the intent is to legitimize the carrying of firearms in a school zone for law abiding Montanans. It is estimated that 85% of Montana homes contain at least one firearm and 65% of Montanans hunt or otherwise use firearms for recreational purposes. Most are unknowingly breaking the federal law because of situations where schools may be only one block from a main highway and during hunting season, many vehicles pass within 1,000 feet of the school. The purpose of this bill is to provide a state license to carry the weapon and that would exempt the law abiding citizen from the federal law. It would also provide for possessing and carrying a firearm for purposes additional to hunting.

Proponents' Testimony:

Gary Marbut, Montana Shooting Sports Association, Gun Owners of America, National Citizen's Committee for the Right to Keep and Bear Arms, Western Montana Fish and Game Association and Big Sky Practical Shooting Club of Montana, presented a history of the

Gun Free School Zones Act as passed by Congress. He said this act was never debated on the floor of Congress or the U. S. Senate but was inserted into the Crime Bill in a conference committee and presented to both houses without time for debate or testimony. He felt the committee would agree that it is not good public policy to criminalize the majority of the population. They were concerned that it provides for discriminatory and selective enforcement. He emphasized that the bill would not exempt school kids because children are not lawfully able to possess firearms under the Montana Constitution. It would not prevent the enforcement of laws concerned with concealed weapons permits.

Alfred "Bud" Elwell, Weapons Collectors Society of Montana and Northwest Arms Collectors, echoed the previous testimony.

REP. AUBYN CURTISS, HD 81, went on record as supporting HB 332. She said that in her county, they stand by the statement that an unloaded gun is more dangerous than a loaded gun.

REP. BILL TASH, HD 34, also rose in support of HB 332.

William C. Hollenbaugh rose in support of the bill.

REP. DANIEL MC GEE, HD 21, supported the bill.

Opponents' Testimony:

None

Questions From Committee Members and Responses:

REP. SHEA asked if there was a case before the court presently trying to establish that the Gun Free School Zone Act is unconstitutional.

REP. CLARK said that both the 5th and 10th Courts of Appeal have overturned the Act of 1990 using the same arguments which have been offered in this hearing. The 9th Circuit did uphold the 1990 Act.

REP. SHEA asked if an adult could go into a state building like a school carrying an unconcealed firearm.

REP. CLARK said a person could not carry a weapon into a state building unless they were a law enforcement officer.

REP. SHEA asked what this means to schools in relationship with adults.

REP. CLARK said that if prosecutors would do their job, all of those issues could be covered.

Mr. Marbut answered the first question she asked. In Montana there was no problem before the Gun Free School Zones Act was passed. There have been no prosecutions in Montana so far. In addition to the other enforcement options in the law, if there is a problem in urban areas, there is a provision in 45-8-351, MCA, which provides for any local government passing a law restricting the carrying of firearms into public buildings.

REP. SHEA described the ordinance passed in Butte-Silver Bow and asked how this bill would affect it.

Mr. Marbut said this bill would have no affect on that ordinance, but only would exempt people from the federal law.

REP. SHIELL ANDERSON wondered about the provision of the bill for a person to have a firearm on school grounds in conflict with perhaps a municipal ordinance or in conflict with 45-8-328, MCA. He asked if they should stipulate that nothing in this new section contained in this bill would supersede existing state law and regulation of firearms on school grounds.

Mr. Marbut was convinced that it is already covered on the last three lines of the bill. Considering that the federal law could be stricken, it might be wise to put a contingent termination clause in this bill.

REP. ANDERSON said as he read the federal law, by passing this law, a state license would be issued to a person to carry a firearm on school grounds. Because they would have that license, they could not be prosecuted under the federal law even though the license would be a state license.

Mr. Marbut said that in the Gun Free School Zones Act there is a provision to exempt people who are licensed by the state to own or possess firearms. He said they could clarify it through language that would say that it is not intended to impact any state or local laws, that would bring no objection; however, he felt it was already covered.

{Tape: 2; Side: B; Approx. Counter: 37.3}

REP. CAREY, in reference to a statement by **REP. CURTISS,** asked why an unloaded gun is more dangerous than a loaded gun.

REP. CLARK replied that the first thing that is heard in an accidental shooting is, "My goodness, I thought it was unloaded." If every gun was loaded all the time, people would be more careful.

REP. CAREY asked why locking a gun rack in a vehicle was not a common practice.

REP. CLARK said the primary reason was there are very few locking gun racks available. Another reason is accessibility while hunting.

REP. CAREY asked why an additional cite to the Second Amendment to the U. S. Constitution was not included.

REP. CLARK said that the Montana Constitution prohibits anyone who has been convicted of a felony from owning or possessing a firearm while they are under supervision. The federal Constitution, with the Second Amendment is not addressed here because it wasn't necessary in this particular legislation.

Closing by Sponsor:

REP. CLARK emphasized that this bill would not allow criminals to possess or carry firearms. It would prevent criminal acts because of the laws already in effect. He suspected that it would be challenged constitutionally, but believed it would pass muster.

CHAIRMAN CLARK resumed the chair.

HEARING ON SB 90

Opening Statement by Sponsor:

SEN. LARRY BAER, SD 38, gave his opening remarks on SB 90, which he characterized as a good public policy, public safety bill. This would alleviate fear of vicarious liability for good qualified firearms instructors willing to teach other people the proper handling and safety precautions of firearms in Montana. Their liability would be restricted to any instance where they exhibited gross negligence resulting in a liability situation caused by the handling of firearms by one of their students.

Proponents' Testimony:

Gary Marbut, Montana Shooting Sports Association (MSSA), Gun Owners of America, National Citizen's Committee for the Right to Keep and Bear Arms, Western Montana Fish and Game Association and Big Sky Practical Shooting Club of Montana, told of the difficulty they are having in recruiting good firearms instructors related in part to the fear of liability for mishandling of the weapons by a student. Although there have been no successful prosecutions of this kind in Montana, there is evidence that this occurs in other states and there seemed to be a rising threat of those actions. He recounted the history behind bringing this legislation in previous sessions and the background in drafting this particular bill. He said they are comfortable with the way it has been amended by the Senate and urged its acceptance. He distributed a copy of the MSSA review of Montana law for gun owners booklet. **EXHIBIT 5**

{Tape: 2; Side: B; Approx. Counter: 53.3}

Alfred "Bud" Elwell, Weapons Collectors Society of Montana and Northwest Arms Collectors, said as a firearms instructor certified by National Rifle Association (NRA), he had found that liability insurance is too costly. He said he feels at risk in the current climate of litigation in this country.

William Hollenbaugh supported SB 90 to increase safety instruction.

Opponents' Testimony:

Russell Hill, Montana Trial Lawyers Association (MTLA), stood in opposition to the bill. He presented written testimony. **EXHIBIT 6**

{Tape: 3; Side: A}

Questions From Committee Members and Responses:

REP. MC GEE asked **Mr. Marbut** if a person applied for a concealed weapon permit from a sheriff and the sheriff contracted with a private group to conduct the competency testing and the person later committed a crime, if the intent of this bill was to hold those instructors not liable for the acts of the individual.

Mr. Marbut said it depended upon what the instructor was actually teaching. The bill is directed at firearm safety instructors rather than people teaching aggressive uses of firearms. The commission of the crime would have no relation to the gun safety course and this would exempt the instructor from liability. The most prominent occurrence they are concerned about is where someone might drop a gun or use one carelessly and therefore be involved in some civil liability rather than a criminal situation.

REP. MC GEE said for him there was a major difference in teaching someone to use a firearm and training people commensurate with what was discussed in getting a concealed weapon permit to satisfy the sheriff that there is competency to handle the firearm. People don't carry concealed weapons with the intent to hunt. Concealed weapons are carried with the intent to use them against a person who might be threatening them. He said there was a very broad definition in this bill of firearms safety instruction and instructor. His concern was that it should be more specifically defined.

Mr. Marbut took exception to the statement that people carry concealed weapons with the intent to use them against another person. It is their intent that the instructors would teach a course that would be acceptable for people who wouldn't apply for concealed weapons permits. They will teach gun safety. What the

concealed weapons law requires is that someone pass a course teaching them safe gun handling, not necessarily defensive use of firearms or anything like that.

REP. MC GEE stated the proposed amendment offered by MTLA outlined in **EXHIBIT 6** and asked if **Mr. Marbut** would support such an amendment.

Mr. Marbut said he would oppose the amendment because it looked like an invitation for litigation because of its "fuzzy" wording. A perfectly legitimate use for firearms as protected under constitutional law is for personal protection and that amendment could be construed to say that if a firearm was used for personal protection, the person who participated in the instruction was not sheltered from liability or could be construed to be exposed to liability.

REP. MC GEE directed attention to line 19 and asked **Mr. Hill** if that phrase did not release an instructor from the immunization he was referring to in his testimony.

Mr. Hill said that it did not because it drastically narrowed the scope of accountability by excluding immunity for carelessness.

REP. MC GEE referred to the bottom of page 1 of his testimony and asked **Mr. Hill** why he thought citizens are liable for their own acts.

Mr. Hill said he carefully used the words, "most other Montana citizens...." because there are categories of people who are vicariously liable for the acts of others.

REP. MC GEE rhetorically asked if, in the hands of a competent lawyer, any citizen could be held liable for anybody else's act. He asked why they would want to limit the firearm safety instructor in such a way that he was not defined as a safety instructor when he in fact trained people in that fashion.

Mr. Hill said that answer had to do with the intent of the proponents. If they wanted to expand the bill beyond firearm safety courses to self-defense courses, then that needed to be acknowledged and be very clear to the committee. He felt they were not talking about the volunteer instructor who handed a loaded gun in an unsafe fashion to a student thereby causing an accident. He believed it dealt with a situation where an instructor might tell his student that in certain situations, there would be justification in using deadly self-defense. That kind of carelessness in instruction which would result in injury or damage should not be immunized.

REP. SMITH wanted to know why the bill did not include standardization in consistent instruction requirements for setting credentials for safety instructors.

SEN. BAER said that most instructors are highly trained individuals who have taken a course through NRA or some similar organization. In the past they had been informed that this would present a different liability situation. He suggested to the committee that if they had a pertinent interest in the bill by adding language which would not interfere with its passage, to feel free to do so. He said they had been stopped everywhere they turned in clarifying or standardizing because they were told the more that was included, the more likely they would incur some different kind of liability. The only intent of the bill was to promote firearm safety.

REP. SMITH asked if those who teach hunter safety had been certified if they had gone through NRA instruction.

Mr. Marbut said there are two types of gun safety instruction in the state, one is hunter safety. Those instructors are trained and certified by the Department of Fish, Wildlife and Parks. The other is NRA-certified instructors. The NRA is not making any new instructors, thus producing a vacuum in instructors. In discussing standards, he suggested adding language such as, "those who are certified by Montana non-profit organizations," or something like that.

{Tape: 3; Side: A; Approx. Counter: 22.0}

REP. HURDLE suggested wording to clarify the boundaries of what a firearms safety instructor is responsible to teach.

Mr. Marbut referred to the brochure, **EXHIBIT 5**, in answering her question. He said there is a Montana law that prohibits training people to use lethal weapons for non-peaceful civil disorder.

REP. HURDLE referred to **Mr. Hill's** proposed amendment and asked for clarification of it and **Mr. Hill** clarified his proposal.

REP. KOTTEL stated that this bill did not eliminate liability for the instructor's own negligence which resulted directly in injury.

Mr. Marbut affirmed that was the intent and that it would cover those situations where acts or omissions of pupils following their active instruction were outside the instructor's control.

REP. KOTTEL said it only attempted to eliminate the vicarious liability of instructors for the intentional or unintentional actions subsequent to the training, but maintained their liability if they were negligent during the training.

Mr. Marbut concurred and fleshed out that interpretation of the intent of the bill.

REP. KOTTEL asked if there was an issue with including the wording of "a certified instructor of firearms safety."

Mr. Marbut did not have a problem with it, but suggested that someone would ask who could certify the instructor and felt that the definition of that was too narrow.

REP. KOTTEL asked if they could offer an amendment to that definition in the concealed weapons law which would be broad enough to then insert the word, "certified" in this bill.

Mr. Marbut did not have any objection to adding that word. He added to some possibility of problems with certification in more local programs.

SEN. BAER had no objection to adding the word, "certified."

REP. BOHARSKI asked if the basic intent on lines 17 and 18 was to cover people who give instruction on the lawful use of firearms.

SEN. BAER said that was true. While he would not want to cover the instruction of how to use a firearm against another human being, he would not want to limit himself from not giving legal advice as to the proper situation where self-defense would be allowed under the law.

REP. BOHARSKI said the scope of the course involved the lawful use of firearms and what a person did with that instruction would not be the liability of the instructor.

SEN. BAER said that was precisely correct.

REP. LINDA MC CULLOCH asked if the wording of the title on line 5 referred to the exclusion of the governmental entities when it used the word, "certain."

SEN. BAER believed it was the intent not to interfere with the acts of government instructors. The bill has limited application to private firearms instructors.

REP. KOTTEL asked about an amendment on line 18 by inserting, "instruct a student in lawful use of firearms and."

SEN. BAER had no objections to that language.

REP. CAREY referred to **Mr. Hill's** testimony that SB 90 would immunize gun instructors whose careless instruction on the safe and proper use of guns resulted in death or injury and asked the sponsor if he accepted that.

SEN. BAER replied that they had used the words, "gross negligence," to set a high water line whereby a firearms instructor wouldn't be held liable for any acts or omissions out of his control.

REP. CAREY said that it seemed to him that an instructor would be exempt unless the instructor exhibited gross negligence,

therefore the instructor was immunized against careless instruction.

SEN. BAER repeated his previous answer.

REP. CAREY understood that gun instructors are not vicariously liable now.

SEN. BAER replied that under current law vicarious liability can be implied and inferred under many situations and they want to remove the stigma from the firearms instructor simply to encourage them to be willing to promote the safe handling of firearms in this state.

REP. CAREY understood that the bill would raise the standard from carelessness to gross negligence of the instructor.

SEN. BAER affirmed the statement.

REP. CAREY asked if the sponsor knew of any lawsuits against a Montana gun-safety instructor.

SEN. BAER said he did not.

REP. CAREY referred again to **Mr. Hill's** testimony that SB 90 immunized instructors who meet no criteria at all and who offer gun instruction for profit and asked if the sponsor agreed.

SEN. BAER did not and recalled some amendments to the bill which would qualify the instructors it pertained to.

Closing by Sponsor:

SEN. BAER closed by asking the committee to keep in mind that it was a safety-promotional bill and contained no mischief or hidden intent for profit on anyone's part.

EXECUTIVE ACTION ON HB 65 CONTINUED

Discussion: **REP. SOFT** offered a solution to the committee as a suggestion which entailed adopting the sponsor's amendments, then utilizing the $1.3 million earmarked for the closure of Eastmont for the start-up and operating costs for two group homes, downsize Eastmont over the next biennium to three 24-bed units located on the same campus and transfer the 19 patients to Boulder (MDC-program). He suggested that the employees at Eastmont be offered the opportunity to form a private, not-for-profit corporation and purchase the property to run three community-based group homes. If they did not purchase and privatize it, then offer it to another entity and if not taken up by anyone, then move on the bill as submitted to shut it down.

REP. GRIMES said that they were not selling the facilities but closing the current use of the facilities. This allows the department to find another use for them. He suggested that **REP. SOFT'S** intention could be accomplished by adding to the bill that it would be sold. However, that might be detrimental as well since the department could find an alternative use for it, then that would benefit the whole community through provision of some different types of jobs. Conceptually he liked the suggestion, but thought it might tie their hands more than it would assist with finding another use for that facility.

REP. ANDERSON said they had heard testimony on the alternatives of leaving the facility open or closing it but there had been none on this current suggestion. His inclination was to pass it unamended on to the Appropriations Committee where the decision could be more appropriately made.

REP. SMITH felt that the committee was on the spot to make decisions without expertise or consensus of opinion. She wondered if they were premature in trying to make the decision. She said she would be opposed to closing Eastmont at this time.

Motion: **REP. HURDLE MOVED THE JOHNSON AMENDMENTS.**

Discussion: **REP. GRIMES** opposed the amendments because of the cost and explained his reasons. He was told by Appropriations Committee members that their decision would be affected by how this committee acted on the bill. The question for him was where they could get the most from the money that is available.

Vote: **The motion failed by roll call vote, 7 - 10. REP. AHNER later changed her vote, making the count 8 - 9.**

Discussion: **REP. SOFT** asked if the bill should be sent to appropriations with a strong recommendation that they look at the other concepts which he had proposed as a part of the process.

REP. ANDERSON believed it could be sent to them with recommendations as proposed and if they were to change the bill from the way it was sent to them, there would be a conference committee to come to some consensus.

REP. SOFT and **CHAIRMAN CLARK** discussed how to facilitate the process in the time allowed. **REP. BOHARSKI** and **REP. GRIMES** also had suggestions for facilitating the process.

{Tape: 3; Side: B}

Discussion: **REP. WYATT** explained her reasoning for suggesting reconsideration of the Johnson amendments.

Motion: **REP. MC GEE MOVED TO ADOPT THE SOFT CONCEPTUAL AMENDMENTS WHICH INCLUDED THE JOHNSON AMENDMENTS.**

Discussion: **REP. MC CULLOCH** felt there was no guilt-free decision in this situation. She asked if this amendment would water-down the community-based part of the bill in an effort to continue with the Eastmont facility.

REP. SOFT explained his conceptual amendment.

REP. MC CULLOCH asked if she understood that would not short-change or water-down any of the already planned facilities (other group homes) in other parts of the state.

REP. SOFT did not believe it would and that it would put three on line right away.

CHAIRMAN CLARK asked, without objection from the committee, that **REP. JOHNSON** and someone from the department address the conceptual amendment.

REP. JOHNSON described the purpose of his amendments and how the conceptual amendments would affect the bill. He said he could not address how the community would feel and react to it. He was not opposed to parts 1 and 2, but did not know about parts 3 and 4 of the proposal.

Bob Anderson, Department of Corrections, addressed the conceptual amendments in terms of how the task force had viewed downsizing Eastmont in the DD system and detailed the problems they had felt would arise. He could say that it probably would cost more than the proposal on the table and described why. He reminded the committee that this bill affected two appropriations committees. He further suggested that the committee look at the original proposals which came out of the task force. He asked that the Johnson amendments be adopted so that the commitment laws are changed if Eastmont were left open.

Information: **EXHIBITS 7, 8, 9, 10, and 11** are included.

Motion/Vote: **REP. WYATT MOVED A SUBSTITUTE AMENDMENT TO RECONSIDER THE JOHNSON AMENDMENTS WITHOUT THE SOFT CONCEPTUAL AMENDMENTS. The motion carried by roll call vote, 10 - 8.**

Motion/Vote: **REP. ANDERSON MOVED HB 65 DO PASS AS AMENDED. The motion carried 10 - 8, REPS. SHEA, ANDERSON, MC GEE, MC CULLOCH, CAREY, GRIMES KOTTEL and SOFT voting no.**

Motion: **REP. WYATT MOVED TO ADJOURN.**

ADJOURNMENT

Adjournment: The meeting was adjourned at 12:45 PM.

Bob Clark
BOB CLARK, Chairman

Joanne Gunderson
JOANNE GUNDERSON, Secretary

BC/jg

HOUSE OF REPRESENTATIVES

Judiciary

ROLL CALL DATE 2/7/95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Bob Clark, Chairman	✓		
Rep. Shiell Anderson, Vice Chair, Majority	✓		
Rep. Diana Wyatt, Vice Chairman, Minority	✓		
Rep. Chris Ahner	✓		
Rep. Ellen Bergman	✓		
Rep. Bill Boharski	✓		
Rep. Bill Carey	✓		
Rep. Aubyn Curtiss	✓		
Rep. Duane Grimes	✓		
Rep. Joan Hurdle	✓		
Rep. Deb Kottel	✓		
Rep. Linda McCulloch	✓		
Rep. Daniel McGee	✓		
Rep. Brad Molnar	✓		
Rep. Debbie Shea	✓		
Rep. Liz Smith	✓		
Rep. Loren Soft	✓		
Rep. Bill Tash	✓		
Rep. Cliff Trexler	✓		

HOUSE STANDING COMMITTEE REPORT

February 7, 1995

Mr. Speaker: We, the committee on **Judiciary** report that **House Bill 65** (first reading copy -- white) **do pass as amended**.

Signed: Bob Clark
Bob Clark, Chair

And, that such amendments read:

1. Title, lines 7 and 8.
Strike: "DISCONTINUING" on line 7 through "DISABILITIES;" on line 8

2. Title, lines 9 and 10.
Strike: "53-1-202," on line 9 through "53-1-402," on line 10

3. Title, line 12.
Following: "53-20-146,"
Insert: "AND"
Following: "53-20-161,"
Strike: "AND 53-20-501,"
Following: "53-20-105"
Strike: ","
Insert: "AND"

4. Title, lines 13 and 14.
Strike: "AND 53-20-502," on line 13
Following: "PROVIDING" on line 13
Insert: "AN IMMEDIATE"
Strike: "DATES" on line 14
Insert: "DATE"

5. Page 1, line 18 through page 3, line 2.
Strike: Sections 1 and 2 in their entirety
Renumber: subsequent sections

2/8

Committee Vote:
Yes 10, No 8.

6. Page 7, line 1 through page 14, line 23.
Strike: Sections 4 and 5 in their entirety
Renumber: subsequent sections

7. Page 30, lines 13 through 17.
Strike: Section 24 in its entirety

8. Page 30, line 19.
Following: "53-20-105"
Strike: ","
Insert: "and"
Strike: "53-20-502,"

9. Page 30, line 28.
Strike: "**dates**"
Insert: "**date**"
Strike: "(1) [Sections 3, 6 through 23, 25, 26,"
Insert: "[Sections 1 through 21"

10. Page 30, line 30 through page 31, line 1.
Strike: subsections (2) and (3) in their entirety

-END-

HOUSE OF REPRESENTATIVES

ROLL CALL VOTE

Judiciary Committee

DATE 2/1/95 BILL NO HB65 NUMBER 1

MOTION: Amend as attached

NAME	AYE	NO
Rep. Bob Clark, Chairman	✓	
Rep. Shiell Anderson, Vice Chairman, Majority		✓
Rep. Diana Wyatt, Vice Chairman, Minority	✓	
Rep. Chris Ahner	✓	~~✓~~
Rep. Ellen Bergman		
Rep. Bill Boharski		✓
Rep. Bill Carey		✓
Rep. Aubyn Curtiss	✓	
Rep. Duane Grimes		✓
Rep. Joan Hurdle	✓	
Rep. Deb Kottel		✓
Rep. Linda McCulloch		✓
Rep. Daniel McGee		✓
Rep. Brad Molnar	✓	
Rep. Debbie Shea	✓	
Rep. Liz Smith	✓	
Rep. Loren Soft		✓
Rep. Bill Tash		✓
Rep. Cliff Trexler		

Amendments to House Bill No. 65
First Reading Copy

Requested by Rep. John Johnson
Prepared by Susan Byorth Fox
February 6, 1995

1. Title, lines 7 and 8.
Strike: "DISCONTINUING" on line 7 through "DISABILITIES;" on line 8

2. Title, lines 9 and 10.
Strike: "53-1-202," on line 9 through "53-1-402," on line 10

3. Title, line 12.
Following: "53-20-146,"
Insert: "AND"
Following: "53-20-161,"
Strike: "AND 53-20-501,"
Following: "53-20-105"
Strike: ","
Insert: "AND"

4. Title, lines 13 and 14.
Strike: "AND 53-20-502," on line 13
Following: "PROVIDING" on line 13
Insert: "AN IMMEDIATE"
Strike: "DATES" on line 14
Insert: "DATE"

5. Page 1, line 18 through page 3, line 2.
Strike: Sections 1 and 2 in their entirety
Renumber: subsequent sections

6. Page 7, line 1 through page 14, line 23.
Strike: Sections 4 and 5 in their entirety
Renumber: subsequent sections

7. Page 30, lines 13 through 17.
Strike: Section 24 in its entirety

8. Page 30, line 19.
Following: "53-20-105"
Strike: ","
Insert: "and"
Strike: "53-20-502,"

9. Page 30, line 28.
Strike: "**dates**"
Insert: "**date**"
Strike: "(1) [Sections 3, 6 through 23, 25, 26,"
Insert: "[Sections 1 through 21"

10. Page 30, line 30 through page 31, line 1.
Strike: subsections (2) and (3) in their entirety

HOUSE OF REPRESENTATIVES

ROLL CALL VOTE

Judiciary Committee

DATE 2/1/95 BILL NO. HB65 NUMBER 2

MOTION: Amend as Attached

NAME	AYE	NO
Rep. Bob Clark, Chairman	✓	
Rep. Shiell Anderson, Vice Chairman, Majority		✓
Rep. Diana Wyatt, Vice Chairman, Minority	✓	
Rep. Chris Ahner	✓	
Rep. Ellen Bergman		
Rep. Bill Boharski	✓	
Rep. Bill Carey		✓
Rep. Aubyn Curtiss	✓	
Rep. Duane Grimes		✓
Rep. Joan Hurdle	✓	
Rep. Deb Kottel		✓
Rep. Linda McCulloch		✓
Rep. Daniel McGee		✓
Rep. Brad Molnar		✓
Rep. Debbie Shea	✓	
Rep. Liz Smith	✓	
Rep. Loren Soft		✓
Rep. Bill Tash	✓	
Rep. Cliff Trexler	✓	

Amendments to House Bill No. 65
First Reading Copy

Requested by Rep. John Johnson
Prepared by Susan Byorth Fox
February 6, 1995

1. Title, lines 7 and 8.
Strike: "DISCONTINUING" on line 7 through "DISABILITIES;" on line 8

2. Title, lines 9 and 10.
Strike: "53-1-202," on line 9 through "53-1-402," on line 10

3. Title, line 12.
Following: "53-20-146,"
Insert: "AND"
Following: "53-20-161,"
Strike: "AND 53-20-501,"
Following: "53-20-105"
Strike: ","
Insert: "AND"

4. Title, lines 13 and 14.
Strike: "AND 53-20-502," on line 13
Following: "PROVIDING" on line 13
Insert: "AN IMMEDIATE"
Strike: "DATES" on line 14
Insert: "DATE"

5. Page 1, line 18 through page 3, line 2.
Strike: Sections 1 and 2 in their entirety
Renumber: subsequent sections

6. Page 7, line 1 through page 14, line 23.
Strike: Sections 4 and 5 in their entirety
Renumber: subsequent sections

7. Page 30, lines 13 through 17.
Strike: Section 24 in its entirety

8. Page 30, line 19.
Following: "53-20-105"
Strike: ","
Insert: "and"
Strike: "53-20-502,"

9. Page 30, line 28.
Strike: "**dates**"
Insert: "**date**"
Strike: "(1) [Sections 3, 6 through 23, 25, 26,"
Insert: "[Sections 1 through 21"

10. Page 30, line 30 through page 31, line 1.
Strike: subsections (2) and (3) in their entirety

No-Johnson Amendments

No-bill

HOUSE OF REPRESENTATIVES

ABSENTEE VOTE

Date 2-7-95

Mr. Chairman/Mr. Speaker:

I, the undersigned member, hereby vote absentee on:

H Bill No. 65

Representative Bill Carey HD67 voting _____
(aye or no)

"and all amendments pertaining thereto." WJC

HOUSE OF REPRESENTATIVES

ABSENTEE VOTE

Date 2-7-95

Mr. Chairman/Mr. Speaker:

I, the undersigned member, hereby vote absentee on:

HB Bill No. 65

Representative Chris Abner voting NO AS IS – (aye or no)

No for discontinuing EASTMONT

Yes for keeping Eastmont open / Amendments by Ed Johnson: Eastmont

HOUSE OF REPRESENTATIVES

ABSENTEE VOTE

Date_____

Mr. Chairman/Mr. Speaker:

I, the undersigned member, hereby vote absentee on:

House Bill No. 65; "NO" to closure of Eastmont
"Yes" to revisions of definitions
amendment

Representative Rep. Liz Smith voting_____
(aye or no)

PROXY —

Support HB 65

Opposed to all ~~[redacted]~~ amendments that would change the intent.

Duane Grimes

EXHIBIT 1
DATE 2/7/95
HB 323

Testimony of Sheriff Chuck O'Reilly
Representing the Montana Sheriffs & Peace Officers Ass'n.

Section 1 of this bill merely adds paperwork to the Sheriff and in fact could add 5 days to the Brady requirement of a 5 day waiting period. For example if a person was granted a concealed weapon permit on February 1st and asked for a letter from the sheriff waiving the 5 day waiting period under Brady, the sheriff has 10 days, or until February 11th, to issue the letter. But if the person went directly to a gun dealer the same day he received the concealed weapon permit without requesting a letter from the sheriff, the maximum he would have to wait would be **5** days or until February 6th!

For these reasons we are proposing deleting Section 1 in its entirety and on line 17, following "a" we suggest striking "letter issued under subsection (1), the...". Paragraph 2 would then become paragraph 1 and would read as follows:

> "Upon showind any handgun seller in this state a person's concealed weapon permit, and a driver's license or other identification card with the person's picture on the card, the person is entitled to buy, and the seller shall sell the person, a handgun withour complying with the 5-day waiting period."

The obvious intent of this bill seems simply to be to allow the showing of a current concealed weapons permit to a gun dealer in order to waive the requirements of the Brady 5 day waiting period since the background check has already been done for the permit.

I believe our proposed amendment does not change that intent and in fact simplifies it and removes what we feel is an unecessary amount of paperwork and a possible additional 5 day waiting period.

Your favorable consideration of our amendments would be appreciated.

EXHIBIT 2
DATE 2/7/95
HB 323

Proposed Amendments

HB 323

Submitted by the Montana Sheriffs & Peace Officers

1. Delete Section 1 in its entirety.

2. Line 17, following "a" strike "letter issued under subsection (1), the"

EXHIBIT 3
DATE 2/1/95
HB 258

ATTORNEY GENERAL
STATE OF MONTANA

Joseph P. Mazurek
Attorney General

Department of Justice
215 North Sanders
PO Box 201401
Helena, MT 59620-1401

February 7, 1995

Rep. John Bohlinger
House of Representatives
Montana State Capitol
Helena, MT 59620

Re: House Bill 258

Dear Representative Bohlinger:

I write to offer the support of the Department of Justice for House Bill 258. Unfortunately, other committee meetings this morning will prevent us from being able to testify on the bill, but I would appreciate your conveying our support to the House Judiciary Committee.

Attorney General Mazurek, together with Superintendent of Public Instruction Nancy Keenan, conducted five community forums last fall to discuss the problem of youth violence. The forums were held in Missoula, Butte, Great Falls, Billings, and Glendive, and included visits to schools in each community. There was substantial turnout at each forum--parents, teachers, school administrators, law enforcement officials, and students--and a great amount of concern was expressed about the trends Montanans believe are occurring in youth behavior. Reports of weapons in the schools were not uncommon.

Curbing the trend of violence among our youth requires a balanced and comprehensive effort, including prevention and enforcement strategies. House Bill 258 addresses an important component of this broad based strategy: Montana will not tolerate weapons in its schools, and both parents and students will be held accountable. Standing alone, of course, the bill will not solve the problem of violence in the schools. But it will provide an important tool to schools and law enforcement in their efforts to keep Montana's schools safe for our children.

Thank you for sharing these comments.

Sincerely,

Beth Baker

ELIZABETH S. BAKER
Assistant Chief Deputy
Attorney General

private entity shall—

"(A) be located in a district that has been designated as needing additional Federal detention facilities pursuant to paragraph (1);

"(B) meet the standards of the American Correctional Association;

"(C) comply with all applicable State and local laws and regulations;

"(D) have approved fire, security, escape, and riot plans; and

"(E) comply with any other regulations that the Marshals Service deems appropriate.

"(3) The United States Marshals Service shall provide an opportunity for public comment on a contract under subsection (a)(3).".

n-Free School
es Act of
0.
JSC 921 note.

SEC. 1702. GUN-FREE SCHOOL ZONES ACT OF 1990.

(a) SHORT TITLE.—This section may be cited as the "Gun-Free School Zones Act of 1990".

(b) PROHIBITIONS AGAINST POSSESSION OR DISCHARGE OF A FIREARM IN A SCHOOL ZONE.—

(1) IN GENERAL.—Section 922 of title 18, United States Code, is amended by adding at the end the following new subsection:

"(q)(1)(A) It shall be unlawful for any individual knowingly to possess a firearm at a place that the individual knows, or has reasonable cause to believe, is a school zone.

"(B) Subparagraph (A) shall not apply to the possession of a firearm—

"(i) on private property not part of school grounds;

"(ii) if the individual possessing the firearm is licensed to do so by the State in which the school zone is located or a political subdivision of the State, and the law of the State or political subdivision requires that, before an individual obtain such a license, the law enforcement authorities of the State or political subdivision verify that the individual is qualified under law to receive the license;

"(iii) which is—

"(I) not loaded; and

"(II) in a locked container, or a locked firearms rack which is on a motor vehicle;

"(iv) by an individual for use in a program approved by a school in the school zone;

"(v) by an individual in accordance with a contract entered into between a school in the school zone and the individual or an employer of the individual;

"(vi) by a law enforcement officer acting in his or her official capacity; or

"(vii) that is unloaded and is possessed by an individual while traversing school premises for the purpose of gaining access to public or private lands open to hunting, if the entry on school premises is authorized by school authorities.

"(2)(A) Except as provided in subparagraph (B), it shall be unlawful for any person, knowingly or with reckless disregard for the safety of another, to discharge or attempt to discharge a firearm at a place that the person knows is a school zone.

"(B) Subparagraph (A) shall not apply to the discharge of a firearm—

"(i) on private property not part of school grounds;

zone, by an individual who is participating in the program;

"(iii) by an individual in accordance with a contract entered into between a school in a school zone and the individual or an employer of the individual; or

"(iv) by a law enforcement officer acting in his or her official capacity.

"(3) Nothing in this subsection shall be construed as preempting or preventing a State or local government from enacting a statute establishing gun-free school zones as provided in this subsection.".

(2) DEFINITIONS.—Section 921(a) of such title is amended by adding at the end thereof the following new paragraphs:

"(25) The term 'school zone' means—

"(A) in, or on the grounds of, a public, parochial or private school; or

"(B) within a distance of 1,000 feet from the grounds of a public, parochial or private school.

"(26) The term 'school' means a school which provides elementary or secondary education, as determined under State law.

"(27) The term 'motor vehicle' has the meaning given such term in section 10102 of title 49, United States Code.".

(3) PENALTY.—Section 924(a) of such title is amended by adding at the end thereof the following new paragraph:

"(4) Whoever violates section 922(q) shall be fined not more than $5,000, imprisoned for not more than 5 years, or both. Notwithstanding any other provision of law, the term of imprisonment imposed under this paragraph shall not run concurrently with any other term of imprisonment imposed under any other provision of law. Except for the authorization of a term of imprisonment of not more than 5 years made in this paragraph, for the purpose of any other law a violation of section 922(q) shall be deemed to be a misdemeanor.".

(4) EFFECTIVE DATE.—The amendments made by this section shall apply to conduct engaged in after the end of the 60-day period beginning on the date of the enactment of this Act. 18 USC 921 note.

(5) GUN-FREE ZONE SIGNS.—Federal, State, and local authorities are encouraged to cause signs to be posted around school zones giving warning of prohibition of the possession of firearms in a school zone. 18 USC 922 note.

SEC. 1703. REPORT ON MANDATORY MINIMUM SENTENCING PROVISIONS.

(a) REPORT.—Not less than six months after the date of enactment of this Act, the United States Sentencing Commission shall transmit to the respective Judiciary Committees of the Senate and House of Representatives a report on mandatory minimum sentencing provisions in Federal law.

(b) COMPONENTS OF REPORT.—The report mandated by subsection (a) shall include:

(1) a compilation of all mandatory minimum sentencing provisions in Federal law;

(2) an assessment of the effect of mandatory minimum sentencing provisions on the goal of eliminating unwarranted sentencing disparity;

(3) a projection of the impact of mandatory minimum sentencing provisions on the Federal prison population;

EXHIBIT 4
DATE 2/16/95
HB 332

EXHIBIT 5
DATE 2/7/95
SB 90

MONTANA SHOOTING SPORTS ASSOCIATION

P.O. BOX 4924
MISSOULA, MT 59806

ORO Y PLATA

ALLOWABLE USES OF LETHAL FORCE

A REVIEW OF MONTANA LAW FOR GUN OWNERS

$2.00

The original of this document is stored at the Historical Society at 225 North Roberts Street, Helena, MT 59620-1201. The phone number is 444-2694.

EXHIBIT 6
DATE 2/7/95
SB 90

Directors:
Wade Dahood
Director Emeritus
[illegible]te D. Beck
Elizabeth A. Best
Michael D. Cok
Mark S. Connell
Michael W. Cotter
Patricia O. Cotter
Karl J. Englund
Robert S. Fain, Jr.
Victor R. Halverson, Jr.
Gene R. Jarussi
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Governor
Paul M. Warren
Governor

February 7, 1995

Sen. Bob Clark, Chair
House Judiciary Committee
Room 312-1, State Capitol
Helena, MT 59620

RE: Senate Bill 90

Mr. Chair, Members of the Committee:

Thank you for this opportunity to express MTLA's opposition to Senate Bill 90, which would insulate careless gun instructors from accountability for their mistakes.

Background. Senate Bill 90 closely resembles a bill which came before the 1993 Legislature, SB 224. The Senate Judiciary Committee tabled that 1993 bill after hearing testimony from the Montana Department of Fish, Wildlife and Parks (FWP) that the state agency had experienced no difficulty in attracting gun-safety instructors because of fear of liability. Consequently, MTLA disagrees with the assumption in Senate Bill 90 (page 1, lines 11-13) that special immunity is necessary to "improve the quality and availability of firearms safety instruction in Montana."

Last month, the Senate Judiciary Committee made two amendments to Senate Bill 90. First, the committee clarified (on page 1, line 19) that the bill only extends immunity to gun instructors in circumstances related to guns. Second, the committee deleted the requirement (on page 1, lines 21-23) that gun instructors maintain "sufficient records" in order to qualify for immunity.

Senate Bill 90. MTLA opposes Senate Bill 90 because:

- ***Under current Montana law, no gun-safety instructor is legally liable for the acts or omissions of their students.*** Gun instructors, like most other Montana

citizens, are only liable for their own acts or omissions. Gun instructors are not vicariously liable for the carelessness of their students. The carelessness of a student is not automatically attributable to the instructor. Senate Bill 90, however, ***immunizes gun instructors whose careless instruction on the safe and proper use of guns results in death or injury.***

- MTLA disagrees with the assumption in Senate Bill 90 (page 1, lines 9-10) that regardless of legal realities, the mere "perception of potential exposure to liability for the conduct, acts, or omissions of students" is sufficient justification for granting special legislative favors to private gun instructors. ***MTLA knows of no lawsuit against a Montana gun-safety instructor for the conduct of a student.***

- Senate Bill 90 applies only to private gun instructors, not to those who happen to be "employed by a governmental entity." Ironically, this distinction between instructors ignores the rigid requirements for gun-safety courses offered by such governmental entities as the Montana Fish, Wildlife and Parks Department; instead, Senate Bill 90 immunizes instructors who (1) ***meet no criteria at all***, and/or (2) ***offer gun instruction for profit*** rather than as volunteers.

- Senate Bill 90 doesn't just ignore criteria for proper gun instruction--***it completely avoids any definition of "firearms safety instructor."*** Consequently, in addition to immunizing traditional volunteer hunter-safety instructors, Senate Bill 90 also apparently immunizes *other* gun instructors, including those who teach ***self-defense with guns.*** MTLA urges this committee--and proponents--to carefully define "firearms safety instructor," perhaps by amending Senate Bill 90 as follows:

> *"For purposes of this section, a firearms safety instructor is one who instructs on the unintentional consequences of firearm use. For purposes of this section, a firearms safety instructor does not include one who instructs on the intentional use of firearms against another human being."*

If MTLA can provide more information or assistance to the Committee, please notify me. Thank you again for this opportunity to express MTLA's opposition to Senate Bill 90.

Respectfully,

Russell B. Hill
Executive Director

EXHIBIT 1
DATE 2/7/95
HB 65

Glendive United Methodist Church

Towne and Kendrick
Box 200
GLENDIVE, MONTANA 59330

January 23, 1995

The Honorable Members of the Human Services Committee
Montana State Legislature
Helena, Montana

Representative John Cobb, Chair
Representative Betty Lou Kasten
Representative Beverly Barnhart

Senator Charles Swysgood
Senator John Lynch
Senator James Burnett

Dear Friends,

We, the undersigned clergy of Glendive, write with enthusiastic support for the excellent, caring services provided by the Eastmont Human Services to its residents in a homelike atmosphere. Dispersing most of the residents to Group Homes and the remainder to Montana Development Center at Boulder will change forever the life these residents have come to know.

What is the quality of life at Eastmont in which these residents thrive?

1. A large number and variety of staff who are familiar with each resident, who can quickly step in for emergencies or when residents have a special need situation.

2. Annual progress in achieving personal goals. Staff members tell of the steady and marked progressive changes residents have made since moving to Eastmont as seen from their many and various perspectives.

3. Professional physical therapy supervised in large, cheerful, well equipped areas.

4. Professional occupational therapy that addresses a resident's capacity to work within Eastmont and other possible settings.

5. Professional educational organization of the residents into 5 units of 10 each, who are similar in need and aptitude, with personalized plans for the group and individuals.

6. Trained staff persons, with the necessary knowledge and comprehensive experience to quickly procure from Medicaid and Medicare the prescribed treatment needs as ordered by physicians, physical therapy and occupational therapy. (No simple task!)

7. Twenty-four hour a day special needs professional and nursing care that is so vital to the quickly changing conditions and needs of the residents.

8. A comprehensive, multi professional Personal Annual Evaluation of each resident's self help skills, social and recreational skills, physical and occupational therapy progress, communication skills and progress with behavior.

9. Professional Dietician services that ensure the quality and correctness of the necessary therapeutic and modified diets required by the residents.

Providing the above tangible quality of life assets in the required most intensive level group home settings CANNOT BE DONE IN SOME INSTANCES (Items 1-5), AND CANNOT BE DONE IN OTHERS WITHOUT COSTLY DUPLICATION OF FACILITIES, EQUIPMENT AND TRAINING.

The Federal Medicaid requirement for serving Eastmont's residents mandates "A continuous, aggressive active treatment program" carried on through twenty four hours a day. Can a series of group homes do that as professionally and efficiently as Eastmont can considering the level of functioning of the residents?

Today's challenging, honorable belief is that everyone is entitled to live in the least restricted environment possible. Sometimes this has achieved positive results. Other times it has not and has created serious problems. (The homeless in our streets for example). Who best determines what the "least restrictive environment" is for persons who require 24 hour a day active attention in order to function? Who knows the issues better than those with the "hands on" practical experience?

We know of no resident's family who has complained or requested this change. We wonder why the legislature would want to take its valuable time.....and spend precious tax funds.....to try to fix something that isn't broken.

We respectfully ask that Eastmont Human Services Center remain intact and funded to continue its excellent care and services. We see and hear about Eastmont's high quality work daily! It is a witness to the intangibles of love, dedication, spirit and reverence that radiate among the Eastmont staff and the Glendive community and which make Eastmont's residents thrive!

Sincerely yours,
Members of the Glendive Ministeral Association

Pastor Dennis Franklin – Assembly of God
Pastor Kenneth Bjerke – Zion Lutheran
Pastor Jimmie Haggard United Methodist
Pastor Allen Solheim – Evangelical Church
Pastor James Sinclair – First Baptist Church
Pastor Harry J. Fogue – Christian & Missionary Alliance Church
Pastor Arlis D. Rand – Community Bible Church

EXHIBIT 8
DATE 2/2/95
HB 65

EASTMONT HUMAN SERVICES CENTER

January, 1995

Eastmont Human Services Center (EHSC) is an intermediate care facility presently serving 49 adults ranging in age from 25 to 72.

The residents that live at EHSC are diagnosed as profoundly mentally retarded and many have severe physical handicaps. This means that their IQ's are below 25, compared to the average adult IQ of 110, most have a functioning age of under 2 years, many are wheelchair bound and do not communicate verbally. All of the residents require 24 hour supervision to ensure their safety. The majority of the residents need an intense amount of staff assistance to dress, bathe, and eat, as well as to complete all other aspects of their daily living routine. Many of the residents have multiple health conditions; for example, 23 residents are diagnosed with seizure disorders, others have heart disorders, mental illness, Alzheimer's, kidney and liver disorders, and those disorders related to age as well.

The kinds of treatments and services that are provided at EHSC include daily programs to maintain and encourage participation in daily routines. Given that the residents are functioning at 2 years old or less and with multiple physical handicaps and health concerns, their daily program may include: learning to toilet on a schedule to decrease the number of accidents due to lack of ability to be toilet trained, learning to pick up a named object, having arms and legs moved by a caretaker to keep flexibility and discourage further atrophy, passing objects to others to increase awareness of surroundings, and learning to fold a washcloth in half in preparation for entry into the Vocational Program.

Community outings are also part of the services provided and require adapted vehicles to transport the residents to and from the activities. These activity programs are mainly used to provide exposure to other sights, sounds, and textures.

EXHIBIT 9
DATE 2/7/95
HB 65

ATTENTION: EASTERN MONTANA RESIDENTS

As indicated in a previous newsletter, a proposal to close Eastmont Human Services Center is being moved forward.

The proposal, if included in the Executive Budget and forwarded to the Legislature in 1995, would move the residents into group homes. By 1997, Eastmont Human Services Center would be closed.

Eastmont Human Services Center provides excellent care and rehabilitative programs for the severely developmentally disabled.

Please read the attached materials. Questions concerning the issue should be directed to Artis Zody, Chairman, Retain Eastmont Committee, 300 E. Barry, Glendive, Montana, 59330.

EASTMONT

The concept of a community based facility to serve the needs of Developmentally Disabled persons in eastern Montana was brought before the 1967 session of the legislature. Legislation establishing Eastmont was passed and Eastmont opened its doors in 1969.

Parents of those individuals in need of services provided by Eastmont, brought them in on Sunday and picked them up Friday. This arrangement provided respite for the parents during the week. This allowed the residents to receive the needed services and training. Family ties were maintained by the individuals returning home over the weekends.

Another benefit of this approach was that it made it possible for the parents to visit with staff and thereby receive advice and information for carrying on the training while the residents were at home.

Eastmont - Past

Eastmont Human Services Center now serves a maximum of 50 adults who are mentally retarded/developmentally disabled. They range in age from 25 to 72 and reside at Eastmont on a full time basis.

The facility is licensed by Medicaid. These regulations require the facility to provide an aggressive and continuous active treatment program for each individual resident.

Each resident is evaluated annually in the following areas:

Psychological /Behavior Management

Developmental (i.e. dressing skills, eating skills, Personal hygiene skills, attending to tasks, etc.)

Recreation/Leisure

Communications

Medical

Nutrition

Occupational Therapy

Physical Therapy

An interdisciplinary team then meets to determine strengths and weaknesses of each individual. A treatment plan is devised for the coming year. The plan is monitored monthly to ensure the resident is receiving the care and treatment needed.

The residents are actively involved in the community. They go out for meals and snacks at local restaurants, attend activities such as fairs, rodeos and various types of ball games and shop at various businesses.

In order to provide the type of program that is needed for the residents, the facility has 105 full time equivalents (F.T.E.) allocated. This translates into 110 - 120 full and part time employees.

The State of Montana provides the facility with a budget of approximately $3.5 million. Medicaid then reimburse the State approximately 70% of the total budget

Eastmont - Present

"Array of Services"

Currently, the Development Disabilities services in Montana provide the following:

1. **Eastmont Human Services Center. Residential campus style center. Has 49 residents at present.**

2. **Intensive care group homes--Up to six residents.**

3. **Standard group homes--Up to eight residents.**

4. **Transitional living; individual apartments but staff available in same building.**

5. **Independent living; independent of others but services available as needed.**

6. **Supported living; Aids come to home to help.**

7. **Montana Developmental Center, Boulder; Room for 110 residents.**

The Committee believes that the Eastern Montana Human Services Center is an option for placement in the services available to the developmentally disabled.

EXHIBIT 10
DATE 2/7/95
HB 65

EASTMONT RETENTION COMMITTEE
POSITION STATEMENT

IT IS OUR POSITION THAT THE PROPOSAL TO CLOSE EASTMONT HUMAN SERVICES CENTER IN 1997 IS NOT IN THE BEST INTEREST OF THE RESIDENTS OF THE CENTER OR IN THE BEST INTEREST OF THE DEVELOPMENTALLY DISABLED POPULATION IN THE STATE OF MONTANA FOR THE FOLLOWING REASONS:

1. A DEDICATED STAFF **DELIVERS QUALITY SERVICES** TO THE RESIDENTS OF **EASTMONT HUMAN SERVICES CENTER**. IN OUR OPNION, THE BEST GROUP HOME SETTING MAY NOT BE ABLE TO MATCH THESE SERVICES.

2. USING THE CRITERIA OF **"LEAST RESTRICTIVE ENVIRONMENT"** IT IS OUR FIRM BELIEF THAT THIS CRITERIA IS **MORE THAN MET** AT **EASTMONT HUMAN SERVICES CENTER.**

   THE RESIDENTS ARE ACTIVELY INVOLVED IN THE COMMUNITY. THEY GO OUT FOR MEALS AND SNACKS AT LOCAL RESTAURANTS. ATTEND CHURCH AND ACTIVITIES SUCH AS FAIRS, RODEO, BALL GAMES, BOWLING, AND SWIMMING. THEY ALSO GO TO THE LIBRARY AND SHOP AT VARIOUS BUSINESSES.

3. IT APPEARS THAT AN **EXPENDITURE OF 1.5 TO 2.0 MILLION DOLLARS IN ADDITION TO THE CURRENT OPERATING BUDGET WILL BE REQUIRED IN THE CLOSING OF EASTMONT HUMAN SERVICES CENTER.**

4. THERE ARE OVER **1300** PERSONS ON THE COMMUNITY **WAITING LIST** WHO ARE IN NEED OF SERVICES. OF THESE, OVER **450 RECEIVE NO SERVICES THROUGH AGENCIES CONTRACTING WITH THE DEVELOPMENTAL DISABILITIES DIVISION (DDD),** WHILE **OVER 850 ARE UNDERSERVED INDIVIDUALS** NEEDING ADDITIONAL OR DIFFERENT SERVICES THAN THOSE THEY CURRENTLY RECEIVE THROUGH THE DDD. **FOUR HUNDRED (400) PERSONS ON THE COMMUNITY WAITING LIST ARE REQUESTING SERVICES SIMILAR TO THOSE WHICH WOULD BE NEEDED BY THE INDIVIDUALS PROPOSED TO BE MOVED FROM RESIDENTIAL FACILITIES.** OF THIS GROUP **300 RECEIVE SOME** DDD FUNDED **SERVICES,** WHILE OVER **100 RECEIVE NO SERVICES**.

5. **EASTMONT HUMAN SERVICES CENTER** CURRENTLY IS SERVING A SEGMENT OF THE DEVELOPMENTALLY DISABLED POPULATION DESPERATELY IN NEED OF THESE SERVICES. GIVEN THE SITUATION FOR DELIVERY OF SERVICES TO THE DEVELOPMENTALLY DISABLED POPULATION AS INDICATED BY THE FIGURES ABOVE,

THE EASTMONT RETENTION COMMITTEE

STRONGLY RECOMMENDS THAT THOSE MONIES THAT WOULD BE EXPENDED TO CLOSE EASTMONT HUMAN SERVICES WOULD BE FAR BETTER SPENT TO BRING SERVICES TO THOSE IN NEED.

EXHIBIT 11
DATE 2/7/95
HB 65

HB 65

HB 65 was recommended by the Governor's Human Services Subcabinet's Interagency Task Force on Developmental Disabilities. The bill accomplishes two major goals:

1. Revises current commitment laws to clarify language and definitions, improve the commitment process, and eliminate current sunset provisions.

2. Discontinues Eastmont Human Services Center's function as a residential facility for the developmentally disabled.

Note: Changes in item 1. are needed even if Eastmont is not discontinued.

Over the past two decades Montana has faced increasing pressure to reorganize its services for individuals with developmental disabilities. In 1989 the Governor's Human Service Sub-cabinet appointed an Interagency Task Force on Developmental Disabilities including representatives from the five human services departments, advocates, family members, institutional and community service providers. Over the last four years the task force has recommended and implemented major initiatives that have substantially reduced and enhanced institutional services while also expanding and improving community services for the developmentally disabled. HB 65 reflects the task force's continuing effort to improve services for indivividuals with developmental disabilities now and in the future.

Through its ongoing review and evaluation of Montana's Developmental Disabilities Service System, it was determined by the task force that many of the individuals currently being served at both Eastmont and the Montana Developmental Center (MDC) could and should be served in less restrictive community services. From this evaluation the task force developed a specific plan to expand community services for approximately 66 individuals in FY 96-97, and for an additional 12 individuals in FY 98-99. These 78 individuals would come from both Eastmont and MDC, with Eastmont discontinuing as a residential facility effective **January 1, 1997**. Also, as part of this plan, revisions in the commitment laws were recommended. Passage of HB 65 is needed to carry out this plan.

HB 65 is not being presented as a criticism of Eastmont's facility, services or staff; and it is <u>not</u> being presented as a cost savings measure. The bill proposes to reallocate current level resources from institutional services to community services, and is being recommended for the following reasons:

1. <u>Philosophy of Normalization</u> - Making available to persons with developmental disabilities the patterns of everyday life which are as close as possible to regular circumstances and normal ways of life and society. Community services can better provide this normal environment than institutions.

2. State and Federal Laws - State law and federal regulations require individuals with a developmental disability be committed to institutional facilities only when they cannot be safely and effectively treated in community based programs. Assessments on 173 individuals committed to institutions indicate that approximately 70 could be served in current types of community based programs.

3. Eastmont Mission - Over the last five years there have been no new commitments to MDC or Eastmont of the types of individuals resembling those being considered for community placement under this proposal. Also the majority of clients being served at Eastmont could be moved to community services. This calls into question "what is the current or future mission of Eastmont?"

4. Reallocation of Resources - When possible, the reallocation of resources from institutional services to community services expands our ability and capacity to provide services.

5. Future - Future needs for institutions is diminishing. Parents of kids with developmental disabilities tell us they will not accept institutional placement as an option for their children.

As part of this plan, the Department Corrections Human Services (DCHS) has recommended funding for an employee transition and benefit package for affected Eastmont employees, and is also researching alternative uses for the Eastmont facility. It is imperative that local officials, labor organizations and legislators also assist in the effort to find an alternative use for the facility.

HB 65 is drafted rather unusual as it requires 3 effective dates. Refer to Section 27:

1. The first effective date is the date of passage and will implement all the commitment language changes but leaves Eastmont and the definition of seriously developmentally disabled alone.

2. January 1, 1997 - keeps in all of the commitment language changes and also eliminates Eastmont.

3. January 1, 1998 - keeps in all commitment language changes, eliminates Eastmont, and changes the definition of seriously developmentally disabled.

The bill was drafted in this manner so effective dates correspond to dates of patient transfers. It also allows for changes in the commitment language to be implemented even if Eastmont is not discontinued, simply by amending out items 2. and 3. from Section 27.

COMMUNITY SERVICE ALTERNATIVES TO EASTMONT(HB65)

Proposal: House Bill 65 and the Executive Budget both contain parts of a proposal to close Eastmont Human Services Center(EHSC) and re-allocate the funding to develop community based programs for 48 current residents of state operated institutions for people with developmental disabilities. The plan is based on the recommendation of the Interagency Task Force on Developmental Disabilities, a group made up of parents, services providers, advocates and state agency personnel.

The following are the questions that are most often asked regrading the proposal:

1. What community services will be developed?

Answer: The plan calls for developing up to eight new six-person intensive group homes and accompanying day services in communities across the state. Fewer homes may be constructed if current group home residents who are seeking other service alternatives are enabled to move into more integrated living situations such as supported apartments. People from the institutions would then be able to move into the openings created in existing homes. This kind of approach would allow more people to immediately benefit from the Eastmont initiative and reduce the need for new home construction.

2. What will the group homes be like?

Answer: The homes are specially constructed to meet the needs of people with disabilities in accordance with nationally recognized health and safety standards. Homes are totally physically accessible and barrier free and include built-in fire sprinkler systems. Great care is taken to ensure that the homes are attractive and that they blend into the neighborhoods in which they are located. The cost of construction is between $250,000 and $300,000 per home.

3. How will the homes be staffed?

Answer: During the hours that people are awake and in the home a minimum of three staff persons will be on duty. At night there will be at least one staff person who is awake and working in the home. Staff receive training in all areas of working with people with disabilities, including, but not limited to: first aid, CPR, supervising the administration of medications, infection control and other health care procedures, and behavior management and other teaching techniques.

4. What will people do during the day?

Answer: People who live in group homes leave the home during the day in order to attend a day program. The activities at the day program are based on the needs and desires of the persons served. Some people work or receive training at the day program; others may receive the assistance and support they need to find and keep a job, if that is possible.

5. Who will operate the services?

Answer: Services are delivered by private not-for-profit corporations under contract with the Department of Social and Rehabilitation Services(SRS). Each corporation is governed by a board of directors made up of citizens with an interest in services to people with disabilities. SRS currently contracts with 52 agencies to provide services to almost 3,300 people with developmental disabilities and their families.

6. Will specialized health related services such as nursing or occupational and physical therapy be available?

Answer: In order to deliver services, the intensive group home provider agency must demonstrate that all the needs of the people they will be asked to serve can be met, including needs for specialized services. Some community agencies directly employ therapists and nurses. Most agencies contract with private providers or home health agencies to deliver these services based on individual need(Eastmont also contracts with private providers for some of these services). No one will move to a place that does not have the resources readily available to meet their specific needs, including specialized therapies.

7. What will the proposal cost?

Answer: When fully implemented the annual cost of the new community services is virtually the same as the cost of operating EHSC, with a small projected general fund savings of about $50,000 per year. There is a one time cost to make the transition to community services during the 1997 biennium of about $1.3 million in state general fund. The one-time funding covers start-up costs for new group homes, costs in phasing out the EHSC facility and employee assistance costs for EHSC staff.

8. Why not spend the money on people waiting for community services?

Answer: Since the proposal re-allocates money that the state is already spending on one type of service to another more appropriate type of service, using the money to address the needs of people on the waiting list is not an option. Addressing the immediate needs of the waiting list would require an ongoing appropriation of additional funding, this proposal does not require any more money once it is fully implemented. The Eastmont closure will, however, have a dramatic impact on the people who will need services in the future. If implemented, the plan will re-allocate over $3.0 million from a service without a waiting list to a set of services that many Montanans are seeking out and waiting for.

9. What's wrong with Eastmont?

Answer: The plan to develop community services is not intended as an indictment of the way Eastmont provides treatment. Eastmont does a good job of providing residential services within the framework of an institutional model of service. The institutional model is the issue. For some extremely aggressive people and some people who require total care and/or are medically fragile, institutions are an appropriate service option. The vast majority of the people with developmental disabilities who live at Eastmont do not have these kinds of needs. Even the most caring and dedicated professionals can't overcome the built-in limitations that are part of serving large numbers of people living in an big residential facility. Because of the limitations of the service model, only folks who really need to be there should be placed in institutions; that's what this discussion is all about.

10. What about the Montana Developmental Center?

Answer: Some states have taken the position that institutions have no role to play in services. Montana's plan for developmental disabilities services has, however, defined a specific role for state operated institutions and assigned that role to Montana Developmental Center(MDC). The mission of MDC has two distinct parts: 1) the treatment of people with severe behavior problems that present a significant danger to themselves and others. 2) services for some people who require total care and may have severe medical conditions. Some of the long term residents of MDC do not meet either of the criteria described above; they will be considered for placement in the community if the plan is approved. All of the people admitted to the institution since the state commitment

law was revised in 1991 fit the new MDC mission. In addition to the Eastmont proposal, the Executive Budget also contains funding to reduce the population at MDC by 18 people. Six of the people will be placed into community services this year, the remainder will be placed in Fy 97. These placements are necessary in order to accommodate the MDC remodeled campus and will go forward regardless of whether or not Eastmont is closed.

11. What do the people in Eastmont look like?

Answer: The average age of the forty-nine people who live at Eastmont is 45 years old. The oldest person is 72, the youngest is 25. The average resident of Eastmont has lived there for a little over 9 years. Seven of the people are from communities east of Billings. Assessments done within the last year indicate that the "typical" Eastmont resident requires a good deal of personal assistance due to their limited ability to meet their own basic self-care needs(feeding, dressing, bathing, toileting etc.). Some residents engage in behaviors that are a challenge for staff to deal with, but few if any present a significant danger to themselves or others. A number of people receive occupational, physical and speech therapy, but the majority of the services are delivered by EHSC direct care staff under the periodic supervision of the contracted professionals. On-site nursing is a need for a very limited number of people.

12. Can community programs really serve the kind of people who live at Eastmont?

Answer: The majority of people with developmental disabilities in Montana who have needs similar to the Eastmont population are already served in community programs. Many of the adults served in intensive group homes and day services have the same needs as the Eastmont group. Since there is no one under the age of 18 in either EHSC or MDC, all of the kids with similar needs are in the community. A survey of parents and advocates of people placed from MDC and EHSC over the last four years revealed that while they were generally satisfied with services at the institutions, having experienced both institution and community services, they prefer the community service model.

13. Who will be placed into community services?

Answer: Assessments done within the last year indicate that at least 70 residents of EHSC and MDC could be served in community programs. If the proposal to close Eastmont is approved, the needs of all of the residents of the two institutions will be re-assessed. The only people who

will be considered for placement will be the individuals from MDC and EHSC who have been determined to be ready after the re-assessment of their needs is complete. Eastmont residents who do not go to community programs will be transferred to MDC.

14. Where will the services be located?

Answer: Efforts will be made to accommodate the desires of the individuals who will be placed. If, for example, a resident has a brother or sister in Butte who would like them closer to home, we will try to develop the services in Butte. Additional criteria that will come into play when making the decision on where to develop services will be the availability of the necessary specialized support services and the long term demand for the group home services in that location.

15. What is the impact on the Glendive community if HB 65 is passed?

Answer: Currently Eastmont has 105.12 positions (fte) and employs approximately 115-120 people. These state jobs would be eliminated under this proposal. The Task Force was unable to identify an alternative mission for EHSC in the developmental disabilities service system. DCHS is currently looking into alternative uses for the Eastmont facility outside of developmental disabilities. The development of an alternative program or use for the Eastmont facility will require assistance from the local community leaders and legislators, and would help mitigate job loses and impact on the community. Also, the Eastern Montana Veterans Home will soon be providing an additional 70-80 jobs and SRS will be looking at developing at least one or even two group homes in Glendive.

16. What is being done to assist the Eastmont employees if this proposal goes forward?

Answer: The Executive Budget includes an Eastmont employee assistance package. This package calls for the continuation of the current state reduction in force (RIF) registry, state employee insurance participation for six months after layoff, moving assistance, and a severance/incentive payment of $650 for every year of state service. Also the Department of Labor will provide training and layoff assistance to Eastmont employees under Title III of the Job Training Partnership Act.

17. Why are we doing this?

Answer: For more than twenty years Montanans have engaged in an ongoing, sometimes lively and contentious, discussion regarding the best ways for the state to assist and support its citizens with developmental disabilities. The place where Montana has drawn the line separating those who can best be served in the state's institutions from the people who can and should live in the community has changed over the two decades. Part of the change is a product of the maturation of community programs. Playing an even larger part in the move towards community services are the changing expectations of parents, advocates and the people with disabilities themselves. The Eastmont proposal represents the latest chapter in the ongoing discussion. **It's a fairly straight forward policy question: What is the highest and best use of the money the state has chosen to spend on developmental disabilities services.**

Some facts are clear:

1) There is no waiting list to get into Eastmont;

2) The only admissions to Eastmont over the past five years have been people transferred from MDC;

3) People are waiting in line for community services;

4) Because of special education and supports for families, no kids are in state operated institutions;

5) The families of the kids with disabilities who have kept their children at home are telling us they do not want institutional services in the future.

Boiled down to its simplest form, the proposal to close Eastmont is an attempt to listen to the customer and re-allocate scarce resources away from a service where demand is decreasing to the services people are telling us they want in the future.

HOUSE OF REPRESENTATIVES
VISITORS REGISTER

JUDICIARY COMMITTEE DATE 2-7-95

BILL NO. HB 323 SPONSOR(S) Rep. Ryan

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	Support	Oppose
GARY MARBUT	MSSA GOA CCRKBA WMFGA BSPSC	✓	
A. Wm (Bud) Elwell	WCSM/NWAC	✓	
William C. Hollenbaugh	Self	✓	
Stan Frasier	Self	X	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HR:1993
wp:vissbcom.man
CS-14

HOUSE OF REPRESENTATIVES
VISITORS REGISTER

JUDICIARY COMMITTEE DATE 2-7-95

BILL NO. HB 258 SPONSOR(S) Rep. Bohlinger

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	Support	Oppose
GARY MARBUT	MSSA GOA CCRBA WMFGA BSPSC		✓
MARY ELLERD	MT JUV PROB OFF	✓	
W. James Kembel	City of Billings	✓	
Dennis Taylor	Yllwstn Co.	✓	
A. Wm (Bud) Elwell	WCSM / NWAC		✓
L. Fagan	Self	✓	
Charles R. Brooks	Yellowstone Cty Comm.	✓	
William C. Hollenbaugh	Self		✓

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HR:1993
wp:vissbcom.man
CS-14

HOUSE OF REPRESENTATIVES
VISITORS REGISTER

JUDICIARY COMMITTEE DATE 2-7-95

BILL NO. HB 332 SPONSOR(S) Rep. Clark

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	Support	Oppose
Cary Marbut	MSSA GOA CCRKBA WMFGA BSPSC	✓	
William C. Hollenbaugh	Self	✓	
Stan Frasier	Self	X	

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HR:1993
wp:vissbcom.man
CS-14

HOUSE OF REPRESENTATIVES
VISITORS REGISTER

JUDICIARY COMMITTEE DATE 2-7-95

BILL NO. SB 90 SPONSOR(S) Sen. Baer

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	Support	Oppose
GARY MARBUT	MSSA GOA CCRKBA WMFGA BSPSC	✓	
William C. Hollenbaugh	Self	✓	
A. M. (Bud) Elwell	wcsm/MWAC	✓	
Stan Frasier	Self	X	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HR:1993
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CS-14

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN BOB CLARK**, on February 11, 1995, at 7:00 AM.

ROLL CALL

Members Present:

Rep. Robert C. Clark, Chairman (R)
Rep. Shiell Anderson, Vice Chairman (Majority) (R)
Rep. Diana E. Wyatt, Vice Chairman (Minority) (D)
Rep. Chris Ahner (R)
Rep. Ellen Bergman (R)
Rep. William E. Boharski (R)
Rep. Bill Carey (D)
Rep. Aubyn A. Curtiss (R)
Rep. Duane Grimes (R)
Rep. Joan Hurdle (D)
Rep. Deb Kottel (D)
Rep. Linda McCulloch (D)
Rep. Daniel W. McGee (R)
Rep. Brad Molnar (R)
Rep. Debbie Shea (D)
Rep. Liz Smith (R)
Rep. Loren L. Soft (R)
Rep. Bill Tash (R)
Rep. Cliff Trexler (R)

Members Excused: NONE

Members Absent: NONE

Staff Present: John MacMaster, Legislative Council
Joanne Gunderson, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Executive Action:

HB 41	DO PASS AS AMENDED
HB 84	DO PASS AS AMENDED
HB 117	DO PASS AS AMENDED
HB 150	DO PASS AS AMENDED
HB 157	DO PASS AS AMENDED
HB 214	DO PASS AS AMENDED
HB 60, HB 93, HB 258	TABLE
HB 271, HB 382, HB 388	TABLE
HB 332, HB 378	DO PASS

{Tape: 1; Side: A

REP. DANIEL MC GEE told the committee that the decision of the subcommittee which had met was to not combine HBs 157 and 214 and **REP. DEB KOTTEL** elaborated on the reasons. They further explained the content of each of the bills.

EXECUTIVE ACTION ON HB 157

Motion: **REP. SHIELL ANDERSON MOVED HB 157 DO PASS.**

Motion: **REP. MC GEE MOVED TO AMEND HB 157. EXHIBIT 1**

Discussion: **REP. KOTTEL** explained the amendments.

REP. BRAD MOLNAR asked to segregate out the first amendment which would strike 45-5-505, MCA.

REP. KOTTEL explained the reasons for this amendment were to take victimless crimes out of the lifetime registration requirement.

REP. MOLNAR and **REP. KOTTEL** continued to debate the first amendment.

John MacMaster asked for clarification on amendments 2 - 6 by striking the word, "sexual," and other areas in the bill where it needed to be struck for consistency. There was additional committee discussion concerning the amendments.

Motion: **REP. KOTTEL MADE A SUBSTITUTE MOTION TO CONSIDER AMENDMENTS 2 - 13 WITH THE UNDERSTANDING THAT LANGUAGE AND TECHNICAL CHANGES COULD BE MADE TO MAKE THE TWO BILLS SYNONYMOUS.**

Discussion: **Mr. MacMaster** questioned taking "sexual" out if the intent of the bill was to have only sexual offenders registered and **REP. KOTTEL** explained the thinking behind it.

REP. MC GEE asked what happens when parallel bills are passed and **Mr. MacMaster** explained the codification and merging process. He explained how and why he did not believe it would work on these two bills if one did not pass. He recommended writing a coordinating clause in one of the bills. He felt it was dangerous to count on them both passing and then to merge them.

Mr. MacMaster said this bill either should cover sexual offenders only or cover all offenders. He confirmed that HB 214 would cover both violent and sex offenders. He said that if they removed "sexual" out of this bill and the other bill didn't pass, this would cover all offenders. If this bill did not pass, the other would cover sexual and violent offenders. If both passed, it wouldn't matter if the other bill said sexual as well as violent and this one did also.

Motion/Vote: REP. KOTTEL MADE A SUBSTITUTE MOTION TO MOVE AMENDMENTS 7, 8, 11 AND 12 FOR HB 157. The motion carried unanimously.

Motion: REP. KOTTEL MOVED AMENDMENTS 2, 3, 4, 5, 6, 9, 10 AND 13 CONCEPTUALLY BE CHANGED IN ANY WAY THAT WOULD COORDINATE HB 157 WITH THE LANGUAGE OF HB 214 WITH DIRECTIONS FOR A CODIFICATION INSTRUCTION.

Motion: REP. MC GEE MADE A SUBSTITUTE MOTION TO STRIKE THE WORD, "SEXUAL," WHERE IT APPEARS IN THE BILL BEFORE "OFFENDER."

Discussion: **REP. WILLIAM BOHARSKI** offered the suggestion to just add all sponsors to one bill, make one bill and clean it up and pass it out of the committee.

REP. KOTTEL had no objection to doing that but expressed the thinking of the Department of Corrections and Human Services (DCHS) in handling it this way. It was a political decision to sever the two bills in case there were objections to lifetime registration of violent offenders. She thought they should be merged because she felt each one was just as strong as the other.

REP. BOHARSKI felt both would pass and one would be easier to deal with.

REP. MOLNAR felt they should pass both bills unamended thinking they would be codified if they both passed. One bill was very narrow in scope. The one which was broad might be challenged by a judge and he wanted each to go on their own merit.

REP. MC GEE recounted the subcommittee discussion and the decision to keep two bills.

REP. BOHARSKI asked what the worry was about the bills not passing or being challenged.

Mr. MacMaster described the problems with the bills as they stood and recommended the amendments necessary to solve those problems. He offered further options for handling the two bills during the process.

REP. MC GEE withdrew his substitute amendment.

REP. KOTTEL withdrew her amendment.

Motion/Vote: REP. KOTTEL MOVED TO STRIKE 45-5-505, MCA. The motion failed 6 - 13, by roll call vote.

Motion: REP. KOTTEL MOVED HB 157 DO PASS AS AMENDED. The motion carried unanimously.

Discussion: **REP. BOHARSKI** said that, in speaking to some judges, he had determined that they wanted to make sure that the court had those offenders and since there is no cure for them, to change all of the sentences.

REP. KOTTEL said these were not only lifetime registrations but also lifetime sentences and pointed out the portions which answered his concern.

REP. BOHARSKI described his concern in more detail and asked how the process would work to alleviate those concerns and the sponsor clarified that process. They continued to discuss the wording of the bill and clarified its intent and result.

Mr. MacMaster asked if the sponsor's intent in amendments 11 and 12, dealing with the penalty provision, was to make the bills read the same. If that was the intent, there were conflicts. The sponsor desired to deal with that in HB 214 amendments.

EXECUTIVE ACTION ON HB 214

Motion: **REP. KOTTEL MOVED HB 214 DO PASS.**

Motion: **REP. KOTTEL MOVED HB 214 BE AMENDED ACCORDING TO ITEMS 4 THROUGH 9 OF EXHIBIT 2.**

Discussion: **REP. KOTTEL** described the reason for these amendments to deal with the immunity provision to make it parallel to HB 157.

Vote: **The motion carried unanimously.**

Motion: **REP. KOTTEL MOVED TO AMEND HB 214, ITEMS 1 THROUGH 3 OF EXHIBIT 2.**

Discussion: **REP. KOTTEL** explained the amendments.

REP. SHIELL ANDERSON asked why the new language was being struck on lines 4 through 6 on page 2.

REP. KOTTEL said it was designed to match HB 157 in saying that police officers are not allowed on their own discretion to release the information. The amendment would make this bill parallel to HB 157.

REP. MC GEE pointed out that page 5, line 15 included a reference to 45-5-505, MCA which caused the bills to conflict.

Motion/Vote: **REP. KOTTEL MADE A SUBSTITUTE MOTION TO MOVE AMENDMENTS 1 THROUGH 3 AND ON PAGE 5, LINE 15 TO INCLUDE 45-5-505, MCA. The motion carried unanimously.**

Motion/Vote: REP. MC GEE MOVED HB 214 DO PASS AS AMENDED. The motion carried 17 - 1, REP. DIANA WYATT voted no.

REP. BOHARSKI and **Mr. MacMaster** discussed the committee's intent in handling the two separate bills.

Motion: REP. WYATT MOVED TO RECESS.

The meeting was recessed at 8:00 AM.

CHAIRMAN BOB CLARK reconvened the meeting at 2:30 PM.

All members and staff were present except **REP. CLIFF TREXLER,** who was excused.

REP. LOREN SOFT described the results of the subcommittee meetings which were held on the human services bills which had come before this committee.

EXECUTIVE ACTION ON HB 60

Motion/Vote: REP. SOFT MOVED TO TABLE HB 60. The motion carried unanimously 14 - 0. REP. CLIFF TREXLER voted by proxy. REPS. GRIMES, BOHARSKI, SMITH and AHNER were absent at the time of the vote.

Information: EXHIBIT 3 was submitted as further information for HB 60.

EXECUTIVE ACTION ON HB 41

Motion: REP. MC GEE MOVED HB 41 DO PASS.

Discussion: REP. SOFT talked the committee through the amendments. He also mentioned the members of the departments and advocacy groups who worked together on the amendments. He said it contained compromise language.

Motion: REP. SOFT MOVED TO AMEND HB 41. EXHIBIT 4

Discussion: REP. TASH said the language referring to involuntary administration of medication to a patient in a mental hospital was exactly the same as what he was asked to carry by the County Attorneys' Association. He asked if the amendment for subsection 2, on page 1 of the amendments was standard language.

{Tape: 1; Side: B; Comments: REP. CLIFF TREXLER voted by proxy on all bills during this meeting.}

Mr. MacMaster said these amendments amend existing code sections. He explained why the code sections were referenced through the amendments.

REP. LIZ SMITH had reviewed the amendments and it appeared to have the balance of giving authority to the medical director and through that process giving opportunity for review by an advocacy group. There were enough checks and balances to make it healthy for everyone.

Vote: **The motion carried unanimously.**

Motion: **REP. CHRIS AHNER MOVED HB 41 DO PASS AS AMENDED.**

Discussion: **REP. TASH** said his notes indicated the need for a fiscal note. The impact of the amendment on the fiscal note was discussed.

CHAIRMAN CLARK requested, without objection from the committee for **Dan Anderson, DCHS,** to address the committee on the fiscal note with the amendments.

Mr. Anderson described it as a moot issue and why.

Vote: **The motion carried unanimously.**

EXECUTIVE ACTION ON HB 93

Motion: **REP. SOFT MOVED HB 93 DO PASS.**

Discussion: **REP. SOFT** discussed the proposed amendments and a change of intent for the bill to reach consensus.

Mr. MacMaster read the proposed statement of intent. There was committee discussion on the proposal.

REP. ANDERSON said he did not like the bill. He said that the last legislature set up vacancy savings and as soon as positions became vacant the departments seemed to rush to fill them. He believed that this bill would have the effect of filling the four positions with treatment personnel. He had a problem with the bill setting up a category of people mentally competent to stand trial, but because they were severely mentally retarded (which he did not think they could be and stand trial), they would be placed at Warm Springs. He said this is becoming a society of victims and people are not being held responsible for their crimes, it is believed that everybody can be rehabilitated. The success rate of the sex offender treatment programs is marginal. He felt they would put a lot of money into treating people who had stood trial, were guilty of a crime and, in his opinion, should be sent to the state prison where a sex offender program existed.

Motion/Vote: **REP. ANDERSON MOVED TO TABLE HB 93. The motion carried 16 - 3, REPS. SMITH, KOTTEL, and SOFT voted no.**

EXECUTIVE ACTION ON HB 84

Motion: **REP. SOFT MOVED HB 84 DO PASS.**

Motion: **REP. SOFT MOVED TO AMEND HB 84. EXHIBIT 5**

Discussion: **REP. SMITH** accepted the amendments and described that her interpretation of them was to not leave the entire responsibility for placement on the director of the department.

REP. SOFT said the intent was to be sure that the director would take into account the recommendations from the treatment team in making placement decisions.

REP. JOAN HURDLE remembered discussion about transfer of a patient for refusal of treatment and **REP. SOFT** said that did not come up in subcommittee discussions.

REP. BOHARSKI asked where the final responsibility rested.

REP. SOFT said the evaluation and recommendations of the treatment team would be taken into account but ultimately the director still would have the authority to do what he needed to do.

REP. BOHARSKI asked if the word, "institution," on line 22 had been changed to "facility." It had been.

Vote: **The motion carried unanimously.**

Motion/Vote: **REP. BOHARSKI MOVED HB 84 DO PASS AS AMENDED. The motion carried unanimously.**

{Tape: 1; Side: b; Approx. Counter: 25.4; Comments: REP. DEBBIE SHEA voted by proxy on all following bills.}

EXECUTIVE ACTION ON HB 117

Motion: **REP. ANDERSON MOVED HB 117 DO PASS.**

Motion: **REP. SMITH MOVED HB 117 BE AMENDED. EXHIBIT 6**

Discussion: **REP. MOLNAR** believed that though they were reluctant to do so, the court could do what these amendments provided now. He did not know what would be accomplished.

REP. DUANE GRIMES said his initial reaction was the same and that it looked to him as if they were trying to prevent people from avoiding prosecution by saying they are unfit to proceed and giving them a way to protract out the whole issue. He asked if **Mr. Dan Anderson,** without objection from the committee, could respond to the possibility that the amendment would nullify the purpose of the bill.

Mr. Anderson described recent situations like this. He said the original bill's intent was to provide a statutory mechanism to do that. However, after reviewing the bill as originally drafted, the Board of Visitors said there was also a constitutional issue. He agreed that the language of the amendment made it more cumbersome, it would overcome the problem by putting in the safeguards that the U. S. Supreme Court has required.

REP. ANDERSON asked if he was saying that he knew for sure that as it stood it was unconstitutional or was it a preemptive strike because they thought there might be a problem.

Mr. Anderson said it was probably the latter, they didn't know for sure that it was unconstitutional but there was a Supreme Court ruling from a similar situation that that level of proof is required. That is what prompted the language.

REP. GRIMES said, "In other words, Mr. Anderson, what we've done is we've brought finality to this process and at least addressing it, it's just a longer finality than what we had before."

Mr. Anderson said that was exactly right. It would make one more hoop to jump through, but they could get the job done.

REP. MOLNAR was confused as to how it differed from what they could currently do. There was committee discussion which settled the issue for him.

Vote: **The motion to amend carried unanimously.**

Motion/Vote: **REP. AHNER MOVED HB 117 DO PASS AS AMENDED. The motion carried unanimously.**

EXECUTIVE ACTION ON HB 150

Motion: **REP. WYATT MOVED HB 150 DO PASS.**

Discussion: **Mr. MacMaster** read and explained the proposed amendments to the committee. The amendments began on page 1, line 21 and line 23 dealing with the makeup of the placement committee, the number to be involved and specifically named individuals. Also it would insert on page 2, line 22 after "department" "at least semiannually."

Motion: **REP. KOTTEL MOVED THE AMENDMENTS TO HB 150.**

Discussion: **REP. AUBYN CURTISS** asked if it was always appropriate that a public defender would be a part of that committee. The answer was inaudible.

REP. BOHARSKI asked why the semi-annual requirement on page 2.

REP. SOFT said it had been left too open-ended and this was added to require regular reporting.

REP. BOHARSKI said that the current law didn't come as a recommendation in the bill.

REP. SOFT said that was true that this was current law.

REP. BOHARSKI asked if there was a cost for the Youth Placement Committee meeting.

REP. SOFT replied that they were all volunteers.

REP. BOHARSKI asked how many youths would be reviewed at these meetings and how many were attached to each committee. He wanted to know if it changed frequently or infrequently. He was attempting to determine whether semiannual reporting was appropriate.

REP. SOFT answered that the committees would meet monthly to review the cases coming before them. After the placement was made, the review would make sure the placement was appropriate.

REP. BOHARSKI wanted to know if the question about the makeup of the committee discussed previously had been addressed. The concern was that the committee would be weighted by members of the department.

REP. SOFT said amendments to address that would be submitted later.

REP. MOLNAR asked if they were going to start paying for a public defender to attend the meetings and he wanted to know who would pay them. He did not know what purpose they would serve at the meeting.

REP. SOFT did not recall that the subcommittee moved to add a public defender. He believed that was to be struck from the first amendment.

Vote: The motion to amend carried unanimously.

Discussion: REP. BOHARSKI asked if there was a committee for each of the youths in a separate individual community or was there a standard community meeting on a regular basis.

REP. SOFT said there was a standard committee which would meet as needed to consider those youths coming up for placement.

REP. BOHARSKI asked who was added to the list for the committee.

CHAIRMAN CLARK answered that they had added parent or guardian and a service provider.

REP. BOHARSKI asked if the committee is a standing committee. He asked if the parent or guardian would be a parent or guardian of a specific youth and if so how would it apply to another youth down the line.

REP. SOFT said it was not a parent of a youth being considered, but there was to be a representative from the community to sit on the committee. He believed that a parent of a youth being considered for placement would never sit on that committee.

REP. MOLNAR asked why the parent of the youth being considered could not be on it. With the current stand on confidentiality, it should be the parent of the child.

REP. SOFT said he stood corrected on that.

REP. BILL CAREY said the administrator of juvenile corrections had pointed out that in some cases the parent of the youth may not be appropriate.

REP. BOHARSKI asked, "What if the child wants to be on there?"

REP. MOLNAR did not believe they would be barred from the meeting.

REP. SMITH had comments about the parental status in the makeup of such a committee. She agreed with the direction of the committee on this issue.

REP. HURDLE said her experience was that it often has a beneficial effect to include the youth at the meeting.

Discussion: **REPS. MOLNAR, BOHARSKI and CHAIRMAN CLARK** voiced views that the permissive language of the bill would allow for that possibility.

Motion: **REP. HURDLE MOVED TO ADD THE WORD, "YOUTH," TO THE LIST.**

Discussion: **REP. BOHARSKI** suggested language that would say, "the youth and/or the parents involved, at their request may attend." So they would not necessarily be counted as members of the committee and it would preclude someone from excluding them.

REP. HURDLE felt it was good procedure to have the participation of the parent and the child.

REP. MOLNAR said the youths are often in shelter care as opposed to detention centers. Those are not locked facilities and he felt if they knew they were going to therapeutic foster care, they would wait and go. On the other hand, if they thought placement would be to a treatment center or Pine Hills, they would walk out. He thought that was why youths are not at the placement committee meetings.

REP. SOFT said the bill was trying to outline the committee itself. He thought that it was understood that parents and youths are involved in the process and did not know if they needed to be included in the list.

REP. KOTTEL said that if it is required rather than permissive, the youth would have to be transported or the committee members would have to be transported to the facility.

REP. AHNER suggested that they might not always want the parent present nor should the child always be present.

Vote: The motion failed 2 - 17, REPS. HURDLE and KOTTEL voted aye.

Motion/Vote: REP. KOTTEL MOVED TO AMEND AT LINES 16 AND 17 ON PAGE 2 TO STRIKE "AT MOUNTAIN" ON LINE 16 THROUGH "SCHOOL" ON LINE 17 AND INSERT "AT A STATE YOUTH CORRECTIONAL FACILITY." The motion carried unanimously.

Motion: REP. SOFT MOVED TO AMEND HB 150. EXHIBIT 7

{Tape: 2; Side: A}

Discussion: Mr. MacMaster explained the amendments and clarified them for **REP. BOHARSKI.**

REP. BOHARSKI asked if it was appropriate and functioning properly for the court to turn the jurisdiction of the youth over to the department for placement and that they could override anything anyone else chose to do.

REP. MOLNAR said it is working, however, some judges don't like it. Judges can do direct placements but can't mandate the expenditure of funds from the Department of Family Services (DFS). One judge testified that he had sentenced one youth to Mountain View 50 times but she was not placed there until the 50th time.

This raised a concern for him on lines 15 and 16 on page 3 which was said to be the language which would allow the judge to make the placement. A recommendation is not a placement, he said, and he thought it should read, "the youth placement committee shall submit a final copy of the placement of the youth to the appropriate youth court." He went on to explain his reasons and then it was pointed out that was included in the amendments being considered.

REP. AHNER said her understanding of the intent was to obtain plans to be submitted to the judge, the judge would choose the plan and still decide what the youth would do before being sent back to the department. Her remaining concern was that they might have a youth who would need more time to finish a certain program and someone would determine the youth had to be moved out

of the facility without consideration of those factors. Members of the committee pointed out that situation was covered by the superintendent having the final say when the youth would be discharged.

REP. BOHARSKI asked if his understanding was correct that the judge would sentence the youth to DFS and then "washes his hands of the thing," goes through the committee recommendations and is notified of the final placement, and then release of the youth is made by the superintendent of the facility. This would put the judge out of the loop except for notification of a change in placement or of discharge after sentencing. Members of the committee affirmed his understanding.

Vote: The amendments motion carried unanimously.

Discussion: REP. BOHARSKI wanted to know if the judge was notified before the youth was released. Members of the committee said no. Then he asked if the judge should not be notified before the youth was released.

REP. MOLNAR said he thought it was covered in one or two of the other bills. It seemed to be a hit or miss situation.

REP. HURDLE felt it could be easily added into the bill at the place where the superintendent would be given final responsibility for the discharge decision.

Motion: REP. MOLNAR MOVED TO AMEND BY INSERTING "THE YOUTH COURT SHALL BE NOTIFIED OF THE FINAL APPROVED PLACEMENT OR CHANGE OF PLACEMENT FOR THE YOUTH."

Discussion: REP. HURDLE suggested eliminating the word, "final," from the amendment. **Mr. MacMaster** recommended striking the words, "final approved."

Motion/Vote: REP. MC GEE MOVED A SUBSTITUTE AMENDMENT TO THAT EFFECT. The motion carried unanimously.

Motion: REP. CAREY MOVED HB 150 DO PASS AS AMENDED.

Discussion: REP. MC GEE expressed his concern that the authority would entirely lie with the department in that the department would choose the committee, listen to the committee, or not listen to the committee, then it would do what it wanted to anyway.

REP. AHNER said, "They have the authority as it is now. The judge just sends them to the department and the department decides. This way the judge is notified and has a little more control."

REP. SMITH had some of the same concerns. Though she did not believe the committee was comfortable with it, she felt they

needed to trust someone to make a decision. She felt they needed to allow the departments to manage the programs.

REP. BOHARSKI asked if the concern about "stacking" the placement committee with department members had been taken care of. The committee members replied that it had. He further said he remembered hearing comments from a judge who said they had found out "three weeks later that this child was released back into the community." He asked if they should put some sort of time constraint on when the judge is notified. "If it is not put in statute, it never seems to get done," he stated.

REP. SMITH recalled that was already in statute but could not say exactly where.

REP. BOHARSKI said it was not clear in this statute. The committee members had various comments on the suggestion.

Motion: REP. MOLNAR MOVED TO AMEND PAGE 3, LINES 15 AND 16 THAT THEY NOTIFY UPON RELEASE.

Discussion: The committee discussed various lengths of time for notification as well as whether it would be prior to or after release.

Mr. MacMaster proposed the following language:

> "The youth court must be notified of the placement for, and of any subsequent change of placement of, the youth within 72 hours after placement is made."

Motion/Vote: REP. BOHARSKI MADE A SUBSTITUTE MOTION TO AMEND ACCORDING TO THE LANGUAGE ABOVE. The motion carried unanimously.

Motion/Vote: REP. WYATT MOVED HB 150 DO PASS AS AMENDED. The motion carried 17 - 0, REPS. SHEA and TREXLER voted by proxy and REPS. GRIMES and SMITH were absent.

CHAIRMAN CLARK relinquished the chair to **VICE CHAIR ANDERSON.**

EXECUTIVE ACTION ON HB 332

Motion: REP. CLARK MOVED HB 332 DO PASS.

Discussion: REP. BOHARSKI asked, "The intent of what you are trying to do is to make sure that, I presume, if there is some sort of screw up in the federal statutes, you want to make sure that someone is not ..... that somehow convicted of some sort of crime under the fed's free school zones act."

REP. CLARK said that was exactly what they were trying to do. They were trying to prevent the honest, law abiding gun owners in the state from getting taken up into that federal law.

Vote: The motion carried unanimously.

CHAIRMAN CLARK resumed the chair.

EXECUTIVE ACTION ON HB 382

Motion: REP. CAREY MOVED HB 382 DO PASS.

Discussion: REP. BOHARSKI, Mr. MacMaster and the members of the committee discussed proposed amendments and the codification, the title adjustments and modification.

Motion/Vote: REP. BOHARSKI MOVED THE AMENDMENTS. The motion carried unanimously.

Motion: REP. ANDERSON MOVED HB 382 DO PASS AS AMENDED.

Discussion: REP. GRIMES was concerned about the definition of a sidewalk.

REP. MC GEE said sidewalks in the common language can be constructed from a variety of materials. He was concerned about the liability issue in the bill for individuals who are responsible for sidewalks adjacent to their property.

REP. KOTTEL did not like the bill because most municipalities can charge back to the person who has the property adjacent to the sidewalk.

REP. MOLNAR asked if the bill would actually fix a problem and if this would leave determination of liability up to the interpretation of the court when someone stumbled on a sidewalk.

REP. GRIMES recalled that the testimony was that currently anything is fair game. The bill would add some definition, although they still may be liable particularly if they didn't make the repairs after notification. It looked to him as if there were downsides with not having the legislation and downsides with having it and the decision had to be which was worse.

REP. HURDLE referred to the claims which were presented as exhibits during the hearing and asked if the purpose of the bill was to reduce the numbers of claims.

Motion: REP. MOLNAR MOVED A CONCEPTUAL AMENDMENT UNDER SECTION 1, LINE 14, "A CITY OR TOWN IS NOT LIABLE FOR NEGLIGENT INSTALLATION OF OR MAINTENANCE FOR ANY DEFECT IN THE SURFACE OF A SIDEWALK. A CITY OR TOWN IS NOT LIABLE FOR FAILURE TO REPAIR A DEFECT OR UNSAFE CONDITION OF A SIDEWALK UNLESS THE CITY OR TOWN HAS KNOWLEDGE OF THE DEFECT OR UNSAFE CONDITION AS A RESULT OF ITS OWN INSPECTION."

Discussion: **REP. GRIMES** asked what it would do to have this in law to help with the claims.

CHAIRMAN CLARK explained the amendments previously passed and the committee discussed the amendments currently being considered.

Motion/Vote: **REP. ANDERSON MOVED TO TABLE HB 382. The motion carried, 17 - 2, REPS. GRIMES and SHEA voted no.**

{Tape: 2; Side: B}

EXECUTIVE ACTION ON HB 258

Motion: **REP. BOHARSKI MOVED HB 258 DO PASS.**

Discussion: **REP. KOTTEL** asked if the gun free school bill included what was proposed in this bill.

CHAIRMAN CLARK said that only dealt with firearms and this bill dealt with all weapons.

It was discussed that the sponsor had proposed two sets of amendments and these were briefly considered.

REP. MOLNAR remembered stating that from the law all weapons are currently covered. The rest of the bill addressed parents as being responsible for the acts of their children and he said that is already a part of law.

Motion/Vote: **REP. MOLNAR MOVED TO TABLE HB 258. The motion carried 11 - 8, by roll call vote.**

EXECUTIVE ACTION ON HB 271

Motion: **REP. WYATT MOVED HB 271 DO PASS.**

Motion: **REP. LINDA MC CULLOCH MOVED A CONCEPTUAL AMENDMENT TO ORDER PREPAYMENT OF THE FILING FEES ON PAGE 1, LINE 14.**

Discussion: **REP. KOTTEL** said that in dissolution proceedings, there is a two-step filing fee, one for the petition and another to record the order of final dissolution when granted.

There was discussion about this bill and its possible connection with another bill passed on the floor of the House and it was determined that the two did not connect.

Mr. MacMaster proposed the wording of the amendment and described it to the committee. It would begin on line 14, page 1 after the word, "petition," to insert "together with the fee for recording the dissolution order."

Vote: The motion carried unanimously.

Discussion: **Mr. MacMaster** reminded the committee that in previous action there had been an amendment added to the bill on page 2, line 14 regarding making copies of the petitions available to the parties in the dissolution.

REP. GRIMES said he did not want to be a part of making divorce any easier.

Motion/Vote: REP. GRIMES MOVED HB 271 DO NOT PASS AS AMENDED.

Discussion: **REP. MC CULLOCH** commented that she also did not want to make divorce easier, but had not been convinced that going before a judge or appearing in court helped to change their minds. She firmly believed that courts should not be tied up with actions like this.

REP. AHNER shared testimony of a judge refusing to grant a divorce, ordering counseling and the marriage being preserved. Had it been handled as this bill proposed, the divorce would have occurred.

REP. KOTTEL felt that it is appropriate to go before the judge in contested divorce cases, but she reported she had seen thousands of uncontested defaulted divorce situations and felt this bill covered those.

REP. SOFT expressed why he would oppose the bill.

REP. MC CULLOCH pointed out that there was a provision in the bill for those who want a court hearing. It just would provide for the case where the parties and the judge saw no need for a hearing.

REP. MC GEE told why he would vote against the bill.

REP. KOTTEL said that legal services in Great Falls has an 18-month waiting list to process defaulted divorces for poor people. She said this bill was drafted with the intent of allowing legal clinics to process the papers without having an attorney to prove it up at a cost of $250.

REP. AHNER adamantly opposed divorce and entering into them lightly. She acknowledged that there are people who will divorce in any case, but did not think it should be made so easy.

REP. GRIMES said though he could sympathize with some of the problems, he remembered the testimony of the young man from the university who said the reasons for some of those marriages was to take advantage of student loans. He felt that any move to weaken or hasten the process was something he could not agree with.

REP. TASH was moved by the testimonies especially about the marriages formed to accommodate student loans, but was more moved by the testimony that there is an oath made at the time of the marriage and did not think there should be anything less to dissolve a marriage. For that reason he was very much opposed to it and thought it was a poor piece of legislation.

Motion/Vote: REP. TASH MOVED TO TABLE HB 271. The motion carried 13 - 6 by roll call vote.

EXECUTIVE ACTION ON HB 388

Discussion: REP. BOHARSKI felt that this would be a divisive bill and that everyone had already decided how they would vote. In the interests of the committee and the time needed to discuss other legislation, he believed it would be best to table the bill. No one disagreed with him.

Motion/Vote: REP. BOHARSKI MOVED TO TABLE HB 388. The motion carried 13 - 6 by roll call vote.

{Tape: 2; Side: B; Approx. Counter: 32.0}

EXECUTIVE ACTION ON HB 378

Motion: REP. AHNER MOVED HB 378 DO PASS.

Motion: REP. KOTTEL MOVED TO AMEND BY STRIKING LINE 28, 29 AND 30 ON PAGE 2 AND LINES 1 AND 2 ON PAGE 3.

Discussion: REP. MC GEE asked about the status of **SEN. LYNCH'S** bill which was called a "two-strikes-you-are-out" bill.

REP. SMITH said the bill was progressing through the system.

REP. MC GEE conferred with **REP. BOHARSKI** about how the amendments and the bill would affect the ones he was presenting. **REP. BOHARSKI** preferred to leave this bill unamended.

REP. TASH agreed that the bill should be passed out of committee without amendments. He felt that with the fiscal note, it would go to the Appropriations Committee where it would be fine tuned where necessary.

REP. ANDERSON asked if this bill allowed the jury to suggest a sentence to the judge. If the judge would accept the suggestion, the person would have to spend the entire length of that sentence without [time off for] good behavior or any other reason.

REP. TASH understood from the bill and the fiscal note the long range planning was to staff a closed custody unit and this measure would require a large outlay of funds.

REP. KOTTEL asked if **Mr. MacMaster** read the way it was drafted to be a single clause in which it said that the court could not defer a suspended sentence only if the court took the jury's recommended sentence or as two clauses under which the court could ask the jury to recommend a sentence and the court then would not defer or suspend any part of the sentence and eliminate "good time."

Mr. MacMaster said he did not think it mattered whether the jury recommended the sentence or not.

REP. KOTTEL asked the committee to look at the fiscal note and consider the impact of the passage of the bill in constructing an 80-bed closed custody housing unit and the cost to maintain the incarceration of every offender. She wondered about the mandate for this covering every offender.

REP. WYATT said she liked the bill, but it had a very significant long-term financial impact. In the last two sessions of the legislature, they had dealt with these issues and always looked at the financial impact knowing the state did not have the money to do some of those things. She felt truth in sentencing was appropriate, but that was not appropriate to spend the unknown amount of money in that direction with this bill. She came to the conclusion it was a good bill for which they did not have the money.

REP. GRIMES asked if it would go to appropriations and that question was answered in the affirmative. For the purposes of coordination with other bills, he felt that all of them would be held and acted on together in that committee.

REP. MC GEE felt there would be a nondetermined deterrent effect when it "hit the streets" and he felt that was a factor to consider.

REP. MOLNAR echoed the previous remarks and felt there would be an offset in the fiscal impact by reducing the numbers of crimes.

REP. BOHARSKI urged the committee to move the bill through the process and let the process sort out how similar bills would fit together.

CHAIRMAN CLARK agreed with **REP. WYATT** but felt the difference between prior sessions and this one was that people had changed their attitude and found that they were saying they would pay more taxes to keep those criminals out of society. He felt that the criminals would get the message and in the long range the costs would level out though in the short range there would be high costs.

There was discussion about bipartisan cooperation over this bill.

REP. KOTTEL withdrew her amendment.

REP. ANDERSON said this bill might have problems but those would be worked out in the process.

Vote: **The motion carried 17 - 2, REPS. CAREY and GRIMES voted no.**

Motion: **REP. CAREY MOVED TO ADJOURN.**

{Comments: This set of minutes is complete on two 60-minute tapes.}

ADJOURNMENT

Adjournment: The meeting was adjourned at 5:50 PM.

Bob Clark
BOB CLARK, Chairman

Joanne Gunderson
JOANNE GUNDERSON, Secretary

BC/jg

HOUSE OF REPRESENTATIVES

Judiciary

ROLL CALL #1 DATE 2/11/95

7:00 AM

NAME	PRESENT	ABSENT	EXCUSED
Rep. Bob Clark, Chairman	✓		
Rep. Shiell Anderson, Vice Chair, Majority	✓		
Rep. Diana Wyatt, Vice Chairman, Minority	✓		
Rep. Chris Ahner	✓		
Rep. Ellen Bergman	✓		
Rep. Bill Boharski	✓		
Rep. Bill Carey	✓		
Rep. Aubyn Curtiss	✓		
Rep. Duane Grimes	✓		
Rep. Joan Hurdle	✓		
Rep. Deb Kottel	✓		
Rep. Linda McCulloch	✓		
Rep. Daniel McGee	✓		
Rep. Brad Molnar	✓		
Rep. Debbie Shea	✓		
Rep. Liz Smith	✓		
Rep. Loren Soft	✓		
Rep. Bill Tash	✓		
Rep. Cliff Trexler	✓		

HOUSE OF REPRESENTATIVES

Judiciary

ROLL CALL #2 DATE 2/11/95

2:30 PM

NAME	PRESENT	ABSENT	EXCUSED
Rep. Bob Clark, Chairman	✓		
Rep. Shiell Anderson, Vice Chair, Majority	✓		
Rep. Diana Wyatt, Vice Chairman, Minority	✓		
Rep. Chris Ahner	✓		
Rep. Ellen Bergman	✓		
Rep. Bill Boharski	✓		
Rep. Bill Carey	✓		
Rep. Aubyn Curtiss	✓		
Rep. Duane Grimes	✓		
Rep. Joan Hurdle	✓		
Rep. Deb Kottel	✓		
Rep. Linda McCulloch	✓		
Rep. Daniel McGee	✓		
Rep. Brad Molnar	✓		
Rep. Debbie Shea	✓		
Rep. Liz Smith	✓		
Rep. Loren Soft	✓		
Rep. Bill Tash	✓		
Rep. Cliff Trexler		✓	✓

HOUSE STANDING COMMITTEE REPORT

February 11, 1995

Mr. Speaker: We, the committee on **Judiciary** report that **House Bill 214** (first reading copy -- white) **do pass as amended**.

Signed: Bob Clark
Bob Clark, Chair

And, that such amendments read:

1. Title, line 10.
Strike: "AND OTHER LAW ENFORCEMENT AGENCIES"

2. Title, lines 11 and 12.
Strike: "PROVIDING" on line 11 through "INFORMATION;" on line 12
Insert: "AND"

3. Title, line 12
Strike: "44-5-301,"

4. Title, line 14.
Strike: "; AND PROVIDING A RETROACTIVE APPLICABILITY DATE"

5. Page 1, line 18 through line 6 of page 2.
Strike: section 1 of the bill in its entirety

Renumber: subsequent sections

6. Page 5, line 15.
Following: "45-5-503,"
Insert: "45-5-504(2)(c),"

7. Page 7, lines 28 and 29.
Strike: "shall" on line 28
Insert: "may"
Strike: "imprisoned in the state prison for a term" on lines 28

Committee Vote:
Yes 17, No 1.

361355SC.Hbk

and 29
Insert: "sentenced to a term of imprisonment"
Strike: "less than" on line 29
Strike: "2 years, or"

8. Page 8, lines 1 through 14.
Strike: lines 1 through 14 in their entirety
Insert: "**NEW SECTION. Section 11. Dissemination of information in register.** Information in the register maintained under 46-18-254 and this part is confidential criminal justice information, as defined in 44-5-103, except that:

(1) the name of a registered sexual offender is public criminal justice information, as defined in 44-5-103; and

(2) before releasing from a state prison an inmate who is a sexual offender, if the department believes that release of information concerning the inmate is necessary for public protection, the department shall petition the district court for the judicial district in which the prison is located or for the judicial district in which the inmate intends to reside for an order allowing the department to release relevant and necessary register information regarding the inmate to the public. The court shall grant the order if the court finds that the information is necessary for public protection."

9. Page 8, lines 16 and 18.
Strike: "12"
Insert: "11"

10. Page 8, lines 20 through 27.
Strike: sections 14 and 15 of the bill in their entirety

-END-

HOUSE STANDING COMMITTEE REPORT

February 11, 1995

Mr. Speaker: We, the committee on **Judiciary** report that **House Bill 157** (first reading copy -- white) **do pass as amended**.

Signed: Bob Clark
Bob Clark, Chair

And, that such amendments read:

1. Page 6, line 30 through line 1 of page 7.
Strike: "the court" on line 30 of page 6 through end of line 1 of page 7
Insert: "a district court"

2. Page 7, lines 3 and 4.
Strike: "Within" on line 3 through "convicted" on line 4
Insert: "The petition must be served on the county attorney in the county where the petition is filed. Prior to a hearing on the petition, the county attorney shall mail a copy of the petition to the victim of the last offense for which the sexual offender was convicted if the victim's address is reasonably available"

3. Page 7, line 5.
Strike: "or victims"

4. Page 7, line 13.
Strike: "less than 90 days or"

5. Page 7, line 14.
Strike: "$5,000"
Insert: "$10,000"

-END-

Committee Vote:
Yes 19, No 0.

5361353SC.HBK

HOUSE STANDING COMMITTEE REPORT

February 14, 1995

Mr. Speaker: We, the committee on **Judiciary** report that **House Bill 41** (first reading copy -- white) **do pass as amended**.

Signed: Bob Clark
Bob Clark, Chair

And, that such amendments read:

1. Title, lines 5 through 9.
Following: ""AN ACT"
Strike: lines 5 through 9 in their entirety
Insert: "PROVIDING A PROCEDURE BY WHICH MEDICATION MAY BE INVOLUNTARILY ADMINISTERED TO A PATIENT AT A MENTAL HEALTH FACILITY; PROVIDING PROTECTIONS FOR THE PATIENT; PROVIDING FOR AN ANNUAL REPORT TO THE GOVERNOR; AND AMENDING SECTIONS 53-21-104 AND 53-21-127, MCA.""

2. Page 1, line 13 through page 23, line 24.
Strike: everything following the enacting clause
Insert: "**Section 1.** Section 53-21-104, MCA, is amended to read:
"**53-21-104. Powers and duties of mental disabilities board of visitors.** (1) The board is an independent board of inquiry and review to assure that the treatment of all persons either voluntarily or involuntarily admitted to a mental facility is humane and decent and meets the requirements set forth in this part.
(2) The board shall review all plans for experimental research involving persons admitted to a mental health facility to assure that the research project is humane and not unduly hazardous and that it complies with the principles of the statement on the use of human subjects for research of the American association on mental deficiency and with the principles for research involving human subjects required by the United

Committee Vote:
Yes 19, No 0.

States department of health, education, and welfare. An experimental research project involving persons admitted to a mental health facility affected by this part may not be commenced unless it is approved by the mental disabilities board of visitors.

(3) The board shall at least annually inspect every mental health facility which is providing treatment and evaluation to any person pursuant to this part. The board shall inspect the physical plant, including residential, recreational, dining, and sanitary facilities. It shall visit all wards and treatment areas. The board shall inquire concerning all treatment programs being implemented by the facility.

(4) The board shall annually insure that a treatment plan exists and is being implemented for each patient admitted or committed to a mental health facility under this part. The board shall inquire concerning all use of restraints, isolation, or other extraordinary measures.

(5) The board may assist any patient at a mental health facility in resolving any grievance the patient may have concerning the patient's commitment or course of treatment in the facility.

(6) The board shall employ and be responsible for full-time legal counsel at the state hospital, whose responsibility is to act on behalf of all patients at the institution. The board shall insure that there is sufficient legal staff and facilities to insure availability to all patients and shall require that the appointed counsel periodically interview every patient and examine the patient's files and records. The board may employ additional legal counsel for representation of patients in a similar manner at any other mental health facility having inpatient capability.

(7) If the board believes that any facility is failing to comply with the provisions of this part in regard to its physical facilities or its treatment of any patient, it shall report its findings at once to the professional person in charge of the facility and the director of the department, and if appropriate, after waiting a reasonable time for a response from the professional person, the board may notify the next of kin or guardian of any patient involved, the friend of respondent appointed by the court for any patient involved, and the district court which has jurisdiction over the facility.

(8) The board shall report annually to the governor concerning:

(a) the status of the mental health facilities and treatment programs which it has inspected; and

(b) medications involuntarily administered to patients in mental health facilities and the effectiveness of the review procedure required by 53-21-127(2) in protecting patients from

unnecessary or excessive medication."

Section 2. Section 53-21-127, MCA, is amended to read:

"**53-21-127. (Temporary) Posttrial disposition.** (1) If, upon trial, it is determined that the respondent is not mentally ill or seriously mentally ill within the meaning of this part, ~~he shall~~ the respondent must be discharged and the petition dismissed.

(2) (a) If it is determined in a proceeding under 53-21-121(1)(a) that the respondent is seriously mentally ill within the meaning of this part, the court shall hold a posttrial disposition hearing. The disposition hearing shall be held within 5 days (including Saturdays, Sundays, and holidays unless the fifth day falls on a Saturday, Sunday, or holiday), during which time the court may order further evaluation and treatment of the respondent. At the conclusion of the disposition hearing, the court shall:

(i) commit the respondent to a facility for a period of not more than 3 months;

(ii) order the respondent to be placed in the care and custody of ~~his~~ a relative or guardian or some other appropriate place other than an institution;

(iii) order outpatient therapy; or

(iv) make some other appropriate order for treatment.

(b) No treatment ordered pursuant to this subsection may affect the respondent's custody for a period of more than 3 months.

(c) In determining which of the above alternatives to order, the court shall choose the least restrictive alternatives necessary to protect the respondent and the public and to permit effective treatment. The court shall consider and shall describe in its order what alternatives for treatment of the respondent are available, what alternatives were investigated, and why the investigated alternatives were not deemed suitable. The court may authorize the chief medical officer of a facility to administer appropriate medication involuntarily if the court finds that involuntary medication is necessary to protect the respondent and the public and to facilitate effective treatment. Medication may not be involuntarily administered to a patient unless the chief medical officer of the facility approves it prior to the beginning of the involuntary administration and unless, if possible, a medication review committee reviews it prior to the beginning of the involuntary administration or, if prior review is not possible, within 5 working days after the beginning of the involuntary administration. The medication review committee must include at least one person who is not an employee of the facility. The patient and the patient's attorney or advocate, if the patient has one, must receive adequate

written notice of the date, time, and place of the review and must be allowed to appear and give testimony and evidence. The involuntary administration of medication must be again reviewed by the committee 14 days and 90 days after the beginning of the involuntary administration if medication is still being involuntarily administered. The mental disabilities board of visitors must be fully informed of the matter within 5 working days after the beginning of the involuntary administration. The court shall enter into the record a detailed statement of the facts upon which it found the respondent to be seriously mentally ill and, if the court authorized involuntary medication, of the facts upon which it found involuntary medication to be necessary.

(3) If it is determined in a proceeding under 53-21-121(1)(b) that the respondent is mentally ill within the meaning of this part, the court shall order that he receive treatment for a period of no more than 30 days. The court shall choose the least restrictive course of treatment reasonably available to the respondent. The court must make a separate finding, setting forth the reason therefor if the order includes a requirement of inpatient treatment or involuntary medication. The court may not order inpatient treatment in the Montana state hospital at Warm Springs under this subsection (3). The respondent may not be required to pay for court-ordered treatment unless he is financially able.

(4) Before ordering any treatment for a respondent found to be mentally ill under subsection (3), the court shall make findings of fact that treatment appropriate to the needs of the respondent is available. The court shall also indicate on the order the name of the facility that is to be responsible for the management and supervision of the respondent's treatment. No person may use physical force to administer medication. A court may use any legal means to enforce an order to take medication, including immediate detention not to exceed 72 hours, until the mentally ill person can be returned to the court. (Terminates July 1, 1997--sec. 1, Ch. 541, L. 1989.)

53-21-127. (Effective July 1, 1997) Posttrial disposition. (1) If, upon trial, it is determined that the respondent is not seriously mentally ill within the meaning of this part, ~~he shall~~ the respondent must be discharged and the petition dismissed.

(2) (a) If it is determined that the respondent is seriously mentally ill within the meaning of this part, the court shall hold a posttrial disposition hearing. The disposition hearing shall be held within 5 days (including Saturdays, Sundays, and holidays unless the fifth day falls on a Saturday, Sunday, or holiday), during which time the court may order further evaluation and treatment of the respondent. At the conclusion of the disposition hearing, the court shall:

(i) commit the respondent to a facility for a period of not

more than 3 months;

(ii) order the respondent to be placed in the care and custody of ~~his~~ a relative or guardian or some other appropriate place other than an institution;

(iii) order outpatient therapy; or

(iv) make some other appropriate order for treatment.

(b) No treatment ordered pursuant to this subsection may affect the respondent's custody for a period of more than 3 months.

(c) In determining which of the above alternatives to order, the court shall choose the least restrictive alternatives necessary to protect the respondent and the public and to permit effective treatment. The court shall consider and shall describe in its order what alternatives for treatment of the respondent are available, what alternatives were investigated, and why the investigated alternatives were not deemed suitable. The court may authorize the chief medical officer of a facility to administer appropriate medication involuntarily if the court finds that involuntary medication is necessary to protect the respondent and the public and to facilitate effective treatment. Medication may not be involuntarily administered to a patient unless the chief medical officer of the facility approves it prior to the beginning of the involuntary administration and unless, if possible, a medication review committee reviews it prior to the beginning of the involuntary administration or, if prior review is not possible, within 5 working days after the beginning of the involuntary administration. The medication review committee must include at least one person who is not an employee of the facility. The patient and the patient's attorney or advocate, if the patient has one, must receive adequate written notice of the date, time, and place of the review and must be allowed to appear and give testimony and evidence. The involuntary administration of medication must be again reviewed by the committee 14 days and 90 days after the beginning of the involuntary administration if medication is still being involuntarily administered. The mental disabilities board of visitors must be fully informed of the matter within 5 working days after the beginning of the involuntary administration. The court shall enter into the record a detailed statement of the facts upon which it found the respondent to be seriously mentally ill and, if the court authorized involuntary medication, of the facts upon which it found involuntary medication to be necessary."

-END-

HOUSE STANDING COMMITTEE REPORT

February 13, 1995

Mr. Speaker: We, the committee on **Judiciary** report that **House Bill 84** (first reading copy -- white) **do pass as amended**.

Signed: Bob Clark
Bob Clark, Chair

And, that such amendments read:

1. Page 1, line 19.
Following: "placed"
Insert: ", after consideration of the recommendations of the professionals providing treatment to the defendant,"

2. Page 1, line 20.
Strike: "institution"
Insert: "facility"

3. Page 1, line 22.
Following: "may"
Insert: ", after considering the recommendations of the professionals providing treatment to the defendant,"
Strike: "institution"
Insert: "facility"

-END-

AS.

Committee Vote:
Yes 19, No 0.

371520SC.Hdh

HOUSE STANDING COMMITTEE REPORT

February 13, 1995

Mr. Speaker: We, the committee on **Judiciary** report that **House Bill 117** (first reading copy -- white) **do pass as amended**.

Signed: Bob Clark

Bob Clark, Chair

And, that such amendments read:

1. Page 1, line 29.
Following: "compliance."
Insert: "The defendant has a right to a hearing on the petition. The court shall enter into the record a detailed statement of the facts upon which an order is made, and if compliance with the individualized treatment plan is ordered, the court shall also enter into the record specific findings that the state has proven an overriding justification for the order and that the treatment being ordered is medically appropriate.

-END-

Committee Vote:
Yes 19, No 0.

371518SC.Hdh

HOUSE STANDING COMMITTEE REPORT

February 14, 1995

Mr. Speaker: We, the committee on **Judiciary** report that **House Bill 150** (first reading copy -- white) **do pass as amended**.

Signed: Bob Clark
Bob Clark, Chair

And, that such amendments read:

1. Page 1, line 20.
Following: "41-5-523."
Insert: "However, the committee may not substitute its judgment for that of the superintendent of a state youth correctional facility regarding the discharge of a youth from the facility."

2. Page 1, line 24.
Following: "~~a representative~~"
Insert: "two"

3. Page 1, line 27.
Strike: "a youth"
Insert: "either the chief probation officer or the youth's"

4. Page 1, line 29.
Strike: "and"

5. Page 2, line 1.
Following: "matters"
Insert: ";
(g) a parent or guardian; and
(h) a youth services provider"

Committee Vote:
Yes 17, No 0.

381242SC.Hdh

6. Page 2, lines 16 and 17.
Strike: "at Mountain" on line 16 through "school" on line 17
Insert: "at a state youth correctional facility"

7. Page 2, lines 17 through 20.
Strike: ", except" on line 17 through "facility" on line 20

8. Page 2, line 22.
Following: "reviews"
Insert: "at least semiannually and at other times"

9. Page 3, line 6.
Strike: "recommend"

10. Page 3, line 7.
Strike: "another"
Insert: "make an"
Strike: "for consideration by the committee"

11. Page 3, lines 15 and 16.
Strike: "The" on line 15 through "court" on line 16
Insert: "Within 72 hours after making a decision on a placement or change of placement, the department shall notify the youth court of the decision and of the placement or change of placement"

-END-

HOUSE STANDING COMMITTEE REPORT

February 13, 1995

Mr. Speaker: We, the committee on **Judiciary** report that **House Bill 332** (first reading copy -- white) **do pass**.

Signed: Bob Clark

Bob Clark, Chair

Committee Vote:
Yes 19, No 0.

370826SC.Hdh

HOUSE STANDING COMMITTEE REPORT

February 13, 1995

Mr. Speaker: We, the committee on **Judiciary** report that **House Bill 378** (first reading copy -- white) **do pass**.

Signed: Bob Clark

Bob Clark, Chair

DP.

Committee Vote:
Yes 17, No 2.

371522SC.Hdh

HOUSE OF REPRESENTATIVES

ROLL CALL VOTE

Judiciary Committee

DATE 2/11/95 BILL NO. HB157 NUMBER Kottel Amendment #2

MOTION: To strike 95-5-505

NAME	AYE	NO
Rep. Bob Clark, Chairman		✓
Rep. Shiell Anderson, Vice Chairman, Majority		✓
Rep. Diana Wyatt, Vice Chairman, Minority	✓	
Rep. Chris Ahner		✓
Rep. Ellen Bergman		✓
Rep. Bill Boharski		✓
Rep. Bill Carey	✓	
Rep. Aubyn Curtiss		✓
Rep. Duane Grimes		✓
Rep. Joan Hurdle	✓	
Rep. Deb Kottel	✓	
Rep. Linda McCulloch	✓	
Rep. Daniel McGee		✓
Rep. Brad Molnar		✓
Rep. Debbie Shea	✓	
Rep. Liz Smith		✓
Rep. Loren Soft		✓
Rep. Bill Tash		✓
Rep. Cliff Trexler		✓

HOUSE OF REPRESENTATIVES

ROLL CALL VOTE

Judiciary Committee

DATE 2/11/95 BILL NO HB258 NUMBER _____

MOTION: To Table

NAME	AYE	NO
Rep. Bob Clark, Chairman	✓	
Rep. Shiell Anderson, Vice Chairman, Majority	✓	
Rep. Diana Wyatt, Vice Chairman, Minority		✓
Rep. Chris Ahner	✓	
Rep. Ellen Bergman	✓	
Rep. Bill Boharski		✓
Rep. Bill Carey		✓
Rep. Aubyn Curtiss	✓	
Rep. Duane Grimes	✓	
Rep. Joan Hurdle		✓
Rep. Deb Kottel		✓
Rep. Linda McCulloch		✓
Rep. Daniel McGee	✓	
Rep. Brad Molnar	✓	
Rep. Debbie Shea		✓
Rep. Liz Smith	✓	
Rep. Loren Soft		✓
Rep. Bill Tash	✓	
Rep. Cliff Trexler	✓	

HOUSE OF REPRESENTATIVES

ROLL CALL VOTE

Judiciary Committee

DATE 2/11/95 BILL NO. HB271 NUMBER _____

MOTION: To Table

NAME	AYE	NO
Rep. Bob Clark, Chairman	✓	
Rep. Shiell Anderson, Vice Chairman, Majority	✓	
Rep. Diana Wyatt, Vice Chairman, Minority		✓
Rep. Chris Ahner	✓	
Rep. Ellen Bergman	✓	
Rep. Bill Boharski	✓	
Rep. Bill Carey		✓
Rep. Aubyn Curtiss	✓	
Rep. Duane Grimes	✓	
Rep. Joan Hurdle		✓
Rep. Deb Kottel		✓
Rep. Linda McCulloch		✓
Rep. Daniel McGee	✓	
Rep. Brad Molnar	✓	
Rep. Debbie Shea		✓
Rep. Liz Smith	✓	
Rep. Loren Soft	✓	
Rep. Bill Tash	✓	
Rep. Cliff Trexler	✓	

HOUSE OF REPRESENTATIVES

ROLL CALL VOTE

Judiciary Committee

DATE 2/11/95 BILL NO. HB388 NUMBER _____

MOTION: To Table

NAME	AYE	NO
Rep. Bob Clark, Chairman	✓	
Rep. Shiell Anderson, Vice Chairman, Majority	✓	
Rep. Diana Wyatt, Vice Chairman, Minority		✓
Rep. Chris Ahner	✓	
Rep. Ellen Bergman	✓	
Rep. Bill Boharski	✓	
Rep. Bill Carey		✓
Rep. Aubyn Curtiss	✓	
Rep. Duane Grimes	✓	
Rep. Joan Hurdle		✓
Rep. Deb Kottel		✓
Rep. Linda McCulloch		✓
Rep. Daniel McGee	✓	
Rep. Brad Molnar	✓	
Rep. Debbie Shea		✓
Rep. Liz Smith	✓	
Rep. Loren Soft	✓	
Rep. Bill Tash	✓	
Rep. Cliff Trexler	✓	

HOUSE OF REPRESENTATIVES
COMMITTEE PROXY

DATE 2-11-95

I request to be excused from the Judiciary Committee Committee meeting this date because of other commitments. I desire to leave my proxy vote with Don McGee.

Indicate **Bill Number** and your vote **Aye** or **No**. If there are **amendments**, list them **by name and number** under the bill and indicate a **separate vote for each amendment.**

HOUSE BILL/AMENDMENT	*AYE*	*NO*
HB 60 - Table	✓	
HB 41 - Pass - Amd	✓	
HB 93 - Tabled	✓	
HB 84 - Amd - Passed	✓	
HB 117 - Amd - Passed	✓	
HB 150 - Amd - Passed	✓	
HB 332 - Passed	✓	
HB 362 - Tabled	✓	
HB 258 - Tabled	✓	
HB 271 - Tabled	✓	
HB 388 - Tabled	✓	

House Bill

~~*SENATE BILL*~~/*AMENDMENT*	*AYE*	*NO*
HB ~~387~~ 378	✓	

Rep. Cathy Taylor
(Signature)

HR:1993
WP/PROXY

HOUSE OF REPRESENTATIVES
COMMITTEE PROXY

DATE 2-11-95

I request to be excused from the Judiciary Committee meeting this date because of other commitments. I desire to leave my proxy vote with Diana Wyatt.

Indicate **Bill Number** and your vote **Aye** or **No**. If there are **amendments**, list them **by name and number** under the bill and indicate a **separate vote for each amendment.**

HOUSE BILL/AMENDMENT	*AYE*	*NO*
271	X	
378		X
388	X	
160		X
	X	

SENATE BILL/AMENDMENT	*AYE*	*NO*

Rep. Joan Hurdle
(Signature)

HR:1993
WP/PROXY

HOUSE OF REPRESENTATIVES
COMMITTEE PROXY

DATE 2/11/95

I request to be excused from the Judiciary Committee meeting this date because of other commitments. I desire to leave my proxy vote with Rep Anderson.

Indicate **Bill Number** and your vote **Aye** or **No**. If there are **amendments**, list them **by name and number** under the bill and indicate a **separate vote for each amendment.**

HOUSE BILL/AMENDMENT	*AYE*	*NO*
HB84 -	✓	

SENATE BILL/AMENDMENT	*AYE*	*NO*

Rep. Tash
(Signature)

HR:1993
WP/PROXY

HOUSE OF REPRESENTATIVES
COMMITTEE PROXY

DATE Feb. 11

I request to be excused from the _____

Committee meeting this date because of other commitments. I desire to leave my proxy vote with Chris Ahner.

Indicate **Bill Number** and your vote **Aye** or **No**. If there are **amendments**, list them **by name and number** under the bill and indicate a **separate vote for each amendment.**

HOUSE BILL/AMENDMENT	*AYE*	*NO*
382		
258	✓	

added 11/8

SENATE BILL/AMENDMENT	*AYE*	*NO*

Rep. Ellen Bergman
(Signature)

HR:1993
WP/PROXY

HOUSE OF REPRESENTATIVES
COMMITTEE PROXY

DATE_____

I request to be excused from the _____

Committee meeting this date because of other commitments. I desire to leave my proxy vote with Diane Wyatt or Jessica McCullen.

Indicate **Bill Number** and your vote **Aye** or **No**. If there are **amendments**, list them **by name and number** under the bill and indicate a **separate vote for each amendment.**

HOUSE BILL/AMENDMENT	*AYE*	*NO*
117		
84	X	
150	X	
93	X	
60	X	
41	X	
160		X
382		X
258 Tabled		X

Passed
Tabled
to Tabled
ed Pass Passed

SENATE BILL/AMENDMENT	*AYE*	*NO*

Rep. _____
(Signature)

HR:1993
WP/PROXY

EXHIBIT 1
DATE 2/11/95
HB 157

AMENDMENTS TO HOUSE BILL 157 AS INTRODUCED

1. Page 6, line 13.
   Strike: "45-5-505,"

2. Page 6, line 30.
   Following: "sexual offense, the"
   Strike: "sexual"

3. Page 6, line 30.
   Following: "sentenced the"
   Strike: "sexual"

4. Page 7, line 1.
   Following: "which the"
   Strike: "sexual"

5. Page 7, line 2.
   Following: "relieving the"
   Strike: "sexual"

6. Page 7, line 3.
   Following: "filed, the"
   Strike: "sexual"

7. Page 7, line 3.
   Strike: "Within 3 days after the petition is filed, the sexual offender shall mail a copy of the petition to the victim or victims, if still living, of the last sexual offense for which the sexual offender was convicted."

8. Page 7, line 3.
   Following: line 3
   Insert: "The petition must be served on the county attorney in the county where the petition is filed. Prior to a hearing on the petition, the county attorney shall mail a copy of the petition to the victim of the last offense for which the sexual offender was convicted if the victim's address is reasonably available."

9. Page 7, line 4.
   Following: "which the"
   Strike: "sexual"

10. Page 7, line 7.
Following: "(a) the"
Strike: "sexual"

11. Page 7, line 13.
Strike: "less than 90 days or"

12. Page 7, line 14.
Strike: "$5,000"
Insert: "$10,000"

13. Page 7, line 19.
Strike: "sexual"

EXHIBIT 2
DATE 2/11/95
HB 214

AMENDMENTS TO HOUSE BILL 214 AS INTRODUCED

1. Page 1, line 16 through page 2, line 2.
   Strike: Section 1 in its entirety
   Renumber: subsequent sections

2. Page 5, line 15.
   Following: "45-5-503"
   Insert: "45-5-504(2)(c)"

3. Page 7, line 16.
   Following: "petition"
   Strike: "a district"
   Insert: "the"

4. Page 7, line 16.
   Following: "court"
   Insert: "that sentenced the offender for the last conviction or, if that court is not in this state, the district court for the judicial district in which the offender resides"

5. Page 7, line 28 through 29.
   Following: "part"
   Strike: "shall be imprisoned in the state prison for a term"
   Insert: "may be sentenced to a term of imprisonment"

6. Page 7, line 29.
   Following: "of not"
   Strike: "less than 2 years or"

7. Page 8, lines 1 through 14.
   Strike: section 12 in its entirety.
   Insert: "NEW SECTION. **Section 12. Dissemination of information in register.** Information in the register maintained under 46-18-254 and this part is confidential criminal justice information, as defined in 44-5-103, except that the name of a registered offender is public criminal justice information, as defined in 44-5-103.

8. Page 8, line 17.
   Strike: "chapter 23, part 5"

9. Page 8, lines 20 through 28.
   Strike: sections 14 through 15 in their entirety.

COMMITMENT OF SERIOUSLY MENTALLY ILL (SMI) YOUTH UNDER HB 60

Age of Youth: less than 16	Age of Youth: 16 - 18
Parent Consents To Treatment ↓ Youth Admitted For Treatment	Youth Consents to Treatment ↓ Youth Does Not Consent to Treatment

EXHIBIT 3
DATE 2/1/95
HB 60

REQUEST FROM PARENT TO COUNTY ATTORNEY TO COMPEL TREATMENT PARENT NOTIFIES COUNTY ATTORNEY OF INTENT TO PAY

Parent Intends to Pay	Parent Payment Not Yet Decided
County Atty files petition for involuntary treatment under **Mental Health Commitment Laws** Title 53, Chapter 21	County Atty files petition for involuntary treatment under **Youth Court Act**, Title 41, Chapter 5
Judge finds youth SMI and orders involuntary treatment	Judge adjudicates youth a "Youth in Need of Supervision" (based on lack of consent only)
Youth Receives Treatment	Judge Finds Youth SMI
Youth Treatment Coordinated w/ parents and Mental Health Case Manager (possibly under MRM)	Judge Commits Youth to Custody of DFS for Treatment
Notice of Discharge to Court	Youth Placement Committee Recommends Placement (HB150)
Youth Discharged after Treatment; No Court Hearing Required	DFS Decides Placement
	Judge Orders Placement? (HB150)
	Youth Receives Treatment (possibly under MRM)
	Youth Under Supervision of **Probation Officer;** May receive Mental Health Case Manager Too
	After Treatment, Hearing and Order of Court required to Return Youth to Custody of Parent

CONSEQUENCES:

1) Parental Rights Over Child Retained	1) Parental Rights Relinquished to State
2) Parent Pays for Treatment	2) **Parent May Be Required To Pay** for Treatment; Ability to Pay is Determined and State **May** Pay for Treatment

For subcomm. not edited.

EXHIBIT 4
DATE 2/11/95
HB 41

Amendments to House Bill No. 41
First Reading Copy

Requested by House Judiciary Subcommittee on Mental Health Bills
For the Committee on the Judiciary

Prepared by John MacMaster
February 1, 1995

1. Title, lines 5 through 9.
Following: ""AN ACT"
Strike: lines 5 through 9 in their entirety
Insert: "PROVIDING A PROCEDURE BY WHICH MEDICATION MAY BE INVOLUNTARILY ADMINISTERED TO A PATIENT AT A MENTAL HEALTH FACILITY; PROVIDING PROTECTIONS FOR THE PATIENT; PROVIDING FOR AN ANNUAL REPORT TO THE GOVERNOR; AND AMENDING SECTIONS 53-21-104 AND 53-21-127, MCA.""

2. Page 1, line 13 through page 23, line 24.
Strike: everything following the enacting clause
Insert: "**Section 1.** Section 53-21-104, MCA, is amended to read:

"**53-21-104. Powers and duties of mental disabilities board of visitors.** (1) The board is an independent board of inquiry and review to assure that the treatment of all persons either voluntarily or involuntarily admitted to a mental facility is humane and decent and meets the requirements set forth in this part.

(2) The board shall review all plans for experimental research involving persons admitted to a mental health facility to assure that the research project is humane and not unduly hazardous and that it complies with the principles of the statement on the use of human subjects for research of the American association on mental deficiency and with the principles for research involving human subjects required by the United States department of health, education, and welfare. An experimental research project involving persons admitted to a mental health facility affected by this part may not be commenced unless it is approved by the mental disabilities board of visitors.

(3) The board shall at least annually inspect every mental health facility which is providing treatment and evaluation to any person pursuant to this part. The board shall inspect the physical plant, including residential, recreational, dining, and sanitary facilities. It shall visit all wards and treatment areas. The board shall inquire concerning all treatment programs being implemented by the facility.

(4) The board shall annually insure that a treatment plan exists and is being implemented for each patient admitted or committed to a mental health facility under this part. The board shall inquire concerning all use of restraints, isolation, or other extraordinary measures.

(5) The board may assist any patient at a mental health

facility in resolving any grievance the patient may have concerning the patient's commitment or course of treatment in the facility.

(6) The board shall employ and be responsible for full-time legal counsel at the state hospital, whose responsibility is to act on behalf of all patients at the institution. The board shall insure that there is sufficient legal staff and facilities to insure availability to all patients and shall require that the appointed counsel periodically interview every patient and examine the patient's files and records. The board may employ additional legal counsel for representation of patients in a similar manner at any other mental health facility having inpatient capability.

(7) If the board believes that any facility is failing to comply with the provisions of this part in regard to its physical facilities or its treatment of any patient, it shall report its findings at once to the professional person in charge of the facility and the director of the department, and if appropriate, after waiting a reasonable time for a response from the professional person, the board may notify the next of kin or guardian of any patient involved, the friend of respondent appointed by the court for any patient involved, and the district court which has jurisdiction over the facility.

(8) The board shall report annually to the governor concerning:

(a) the status of the mental health facilities and treatment programs which it has inspected; and

(b) medications involuntarily administered to patients in mental health facilities and the effectiveness of the review procedure required by 53-21-127(2) in protecting patients from unnecessary or excessive medication."

{x*Internal References to 53-21-104: 53-21-166*}

Section 2. Section 53-21-127, MCA, is amended to read:

"**53-21-127. (Temporary) Posttrial disposition.** (1) If, upon trial, it is determined that the respondent is not mentally ill or seriously mentally ill within the meaning of this part, he shall be discharged and the petition dismissed.

(2) (a) If it is determined in a proceeding under 53-21-121(1)(a) that the respondent is seriously mentally ill within the meaning of this part, the court shall hold a posttrial disposition hearing. The disposition hearing shall be held within 5 days (including Saturdays, Sundays, and holidays unless the fifth day falls on a Saturday, Sunday, or holiday), during which time the court may order further evaluation and treatment of the respondent. At the conclusion of the disposition hearing, the court shall:

(i) commit the respondent to a facility for a period of not more than 3 months;

(ii) order the respondent to be placed in the care and custody of his relative or guardian or some other appropriate place other than an institution;

(iii) order outpatient therapy; or

(iv) make some other appropriate order for treatment.

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(b) No treatment ordered pursuant to this subsection may affect the respondent's custody for a period of more than 3 months.

(c) In determining which of the above alternatives to order, the court shall choose the least restrictive alternatives necessary to protect the respondent and the public and to permit effective treatment. The court shall consider and shall describe in its order what alternatives for treatment of the respondent are available, what alternatives were investigated, and why the investigated alternatives were not deemed suitable. The court may authorize the chief medical officer of a facility to administer appropriate medication involuntarily if the court finds that involuntary medication is necessary to protect the respondent and the public and to facilitate effective treatment. Medication may not be involuntarily administered to a patient unless the chief medical officer of the facility approves it prior to the beginning of the involuntary administration and unless, if possible, a medication review committee reviews it prior to the beginning of the involuntary administration, and if prior review is not possible, within 5 working days after the beginning of the involuntary administration. The medication review committee must include at least one person who is not an employee of the facility. The patient and the patient's attorney or advocate, if the patient has one, must receive adequate written notice of the date, time, and place of the review and must be allowed to appear and give testimony and evidence. The involuntary administration of medication must be again reviewed by the ~~same~~ committee 14 days and 90 days after the beginning of the involuntary administration if medication is still being involuntarily administered. The mental disabilities board must be fully informed of the matter within 5 working days after the beginning of the involuntary administration. The court shall enter into the record a detailed statement of the facts upon which it found the respondent to be seriously mentally ill and, if the court authorized involuntary medication, of the facts upon which it found involuntary medication to be necessary.

(3) If it is determined in a proceeding under 53-21-121(1)(b) that the respondent is mentally ill within the meaning of this part, the court shall order that he receive treatment for a period of no more than 30 days. The court shall choose the least restrictive course of treatment reasonably available to the respondent. The court must make a separate finding, setting forth the reason therefor if the order includes a requirement of inpatient treatment or involuntary medication. The court may not order inpatient treatment in the Montana state hospital at Warm Springs under this subsection (3). The respondent may not be required to pay for court-ordered treatment unless he is financially able.

(4) Before ordering any treatment for a respondent found to be mentally ill under subsection (3), the court shall make findings of fact that treatment appropriate to the needs of the respondent is available. The court shall also indicate on the order the name of the facility that is to be responsible for the management and supervision of the respondent's treatment. No person may use physical force to administer medication. A court

may use any legal means to enforce an order to take medication, including immediate detention not to exceed 72 hours, until the mentally ill person can be returned to the court. (Terminates July 1, 1997--sec. 1, Ch. 541, L. 1989.)

53-21-127. (Effective July 1, 1997) Posttrial disposition. (1) If, upon trial, it is determined that the respondent is not seriously mentally ill within the meaning of this part, he shall be discharged and the petition dismissed.

(2) (a) If it is determined that the respondent is seriously mentally ill within the meaning of this part, the court shall hold a posttrial disposition hearing. The disposition hearing shall be held within 5 days (including Saturdays, Sundays, and holidays unless the fifth day falls on a Saturday, Sunday, or holiday), during which time the court may order further evaluation and treatment of the respondent. At the conclusion of the disposition hearing, the court shall:

(i) commit the respondent to a facility for a period of not more than 3 months;

(ii) order the respondent to be placed in the care and custody of his relative or guardian or some other appropriate place other than an institution;

(iii) order outpatient therapy; or

(iv) make some other appropriate order for treatment.

(b) No treatment ordered pursuant to this subsection may affect the respondent's custody for a period of more than 3 months.

(c) In determining which of the above alternatives to order, the court shall choose the least restrictive alternatives necessary to protect the respondent and the public and to permit effective treatment. The court shall consider and shall describe in its order what alternatives for treatment of the respondent are available, what alternatives were investigated, and why the investigated alternatives were not deemed suitable. The court may authorize the chief medical officer of a facility to administer appropriate medication involuntarily if the court finds that involuntary medication is necessary to protect the respondent and the public and to facilitate effective treatment. Medication may not be involuntarily administered to a patient unless the chief medical officer of the facility approves it prior to the beginning of the involuntary administration and unless, if possible, a medication review committee reviews it prior to the beginning of the involuntary administration, and if prior review is not possible, within 5 working days after the beginning of the involuntary administration. The medication review committee must include at least one person who is not an employee of the facility. The patient and the patient's attorney or advocate, if the patient has one, must receive adequate written notice of the date, time, and place of the review and must be allowed to appear and give testimony and evidence. The involuntary administration of medication must be again reviewed by the ~~same~~ committee 14 days and 90 days after the beginning of the involuntary administration if medication is still being involuntarily administered. The mental disabilities board must be fully informed of the matter within 5 working days after the beginning of the involuntary administration. The court shall

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enter into the record a detailed statement of the facts upon which it found the respondent to be seriously mentally ill and, if the court authorized involuntary medication, of the facts upon which it found involuntary medication to be necessary.""

{*xInternal References to 53-21-127:*

41-5-523	*53-21-102*	*53-21-128*	*53-21-128*
53-21-128	*53-21-128*	*53-21-128*	*53-21-128*
53-21-128	*53-21-128*	*53-21-135*	*53-21-181*
53-21-195	*53-21-195*	*53-21-197*	*53-21-197*
53-21-198	*53-21-198*	*53-21-198*	*53-21-412*}

For Subcomm ~ not edited

EXHIBIT 5
DATE 2/1/95
HB 84

Amendments to House Bill No. 84
First Reading Copy

Requested by Rep. Soft's Subcommittee
For the Committee on the Judiciary

Prepared by John MacMaster
January 30, 1995

1. Page 1, line 19.
Following: "placed"
Insert: ", after consideration of the recommendations of the professionals providing treatment to the defendant,"

2. Page 1, line 20.
Strike: "institution"
Insert: "facility"

3. Page 1, line 22.
Following: "may"
Insert: ", after considering the recommendations of the professionals providing treatment to the defendant,"
Strike: "institution"
Insert: "facility"

EXHIBIT 6
DATE 3/11/95
HB 117

Amendments to House Bill No. 117
First Reading Copy

Requested by the Subcommittee
For the Committee on the Judiciary

Prepared by John MacMaster
February 8, 1995

1. Page 1, line 29.
Following: "compliance."
Insert: "The defendant has a right to a hearing on the petition. The court shall enter into the record a detailed statement of the facts upon which an order is made, and if compliance with the individualized treatment plan is ordered, the court shall also enter into the record specific findings that the state has proven an overriding justification for the order and that the treatment being ordered is medically appropriate.

EXHIBIT 7
DATE 2/11/95
HB 150

Amendments to HB 150

1. Page 1, line 20.
Following: "41-5-523"
Strike: "."
Insert: ", except that the committee may not substitute its judgement for that of a superintendent of a youth correctional facility regarding discharge of a youth from a state youth correctional facility."

2. Page 1, line 24.
Following: "~~a representative~~"
Insert: "two"

3. Page 1, line 27.
Strike: "a"
Insert: "either the chief"
Following: "officer"
Insert: "or the youth's probation officer"

4. Page 2, lines 17 through 20.
Strike: ", except that the youth placement committee may not substitute its judgement for that of the superintendent of a state youth correctional facility who has the responsibility for decisions regarding the discharge of a youth from a state youth correctional facility."

5. Page 3, lines 6-7.
Following: "shall"
Strike: "recommend another appropriate placement for the youth for consideration by the committee."
Insert: "be responsible for determining an appropriate placement for the youth."

6. Page 3, lines 15-16.
Strike: "The youth placement committee shall submit a copy of the final recommendation for placement of the youth to the appropriate youth court."
Insert: "The youth court shall be notified of the final approved placement for the youth."

MINUTES

MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN BRUCE D. CRIPPEN**, on March 17, 1995, at 9:00 AM

ROLL CALL

Members Present:
Sen. Bruce D. Crippen, Chairman (R)
Sen. Al Bishop, Vice Chairman (R)
Sen. Larry L. Baer (R)
Sen. Sharon Estrada (R)
Sen. Lorents Grosfield (R)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Linda J. Nelson (D)

Members Excused: Sen. Mike Halligan (D)

Members Absent: None

Staff Present: Valencia Lane, Legislative Council
Judy Keintz, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing: HB 160, HB 323, HB 332
Executive Action: None

HEARING ON HB 323

Opening Statement by Sponsor:

REPRESENTATIVE WILLIAM RYAN, House District 44, Great Falls, presented HB 323. This bill allows a person with a concealed weapon permit to purchase a handgun in the state of Montana without going through the five day waiting period. This bill was tied to HB 232, which is back in the House with minor adjustments. There is a section at the bottom of this bill which states that if HB 232 passes, this one would be dropped because it was included in HB 232.

Proponents' Testimony:

E. M. Elwell, Northwest Arms Collectors, The Montana Weapons Collection Society, stated they were the initiators of this bill. It is only fair that those who have gone through the system of background checks and have a concealed weapon permit be waived the 5-day waiting period. This will allow the gun show participants to make sales on handguns to those who have already been carefully screened. The 5-day waiting period was a mandate to run a background check. This is unnecessary for these people.

Opponents' Testimony: None

Informational Testimony: None

Questions From Committee Members and Responses:

SENATOR AL BISHOP asked why line 21 does not refer to other forms which need to be filled out to obtain a concealed weapon permit.

REPRESENTATIVE RYAN commented that this bill is designed to reduce paperwork.

Closing by Sponsor:

REPRESENTATIVE RYAN stated this bill is simply to reduce paperwork. In the House they had sheriffs testify in favor of this legislation.

HEARING ON HB 332

Opening Statement by Sponsor:

REPRESENTATIVE ROBERT CLARK, House District 8, Ryegate, presented HB 332. This bill is an attempt to allow honest, law abiding citizens to circumvent the Gun Free School Zones Act of 1990. When Congress passed the crime bill, it went to a conference committee. During that conference committee, this gun free school zones portion was added to the bill and passed through Congress. Congress has no concept of life in rural America. This Act makes every law abiding citizen who has a firearm in their vehicle or travels within 1000 feet of a school with a firearm which is not unloaded and locked in a secure rack or gun case, a federal criminal. This law has been overturned in two U.S. Appeals Courts, the Fifth and the Tenth Circuits; however, when it was challenged in the Ninth Circuit, the Ninth Circuit upheld the law. This bill will license every law abiding citizen in Montana and thereby circumvents the Gun Free School Zones Act. If you are licensed, you do not need to worry about the 1000 feet. In his hometown, U.S. 12 runs through town and is within one block of the school. Every year, especially during hunting season, they have thousands of people who are subject to being arrested under a federal statute. He presented the committee with a handout, **EXHIBIT 1.**

Proponents' Testimony:

E. M. Elwell, Northwest Arms Collectors, Montana Weapons Collection Society, stated they fully support HB 332. He lives in Clancy. Some of the best hunting in the area is in Clancy Gulch. The only way to get there is to go past the school. The road is within 30 feet of the school. Ninety percent of the people in the state of Montana do hunt. This is an unfair law to the rural areas.

Opponents' Testimony: None

Informational Testimony: None

Questions From Committee Members and Responses:

SENATOR HOLDEN asked how rifles in gun racks would fit into today's standards at schools.

REPRESENTATIVE CLARK stated people who have rifles in gun racks at school would be breaking the federal law. HB 167 prohibits students from having a gun on school property.

SENATOR DOHERTY commented that they heard HB 167 in the Senate Education Committee. They left the definition of school property to be determined on a case by case basis. The trustees at the local level will be able to make that call. The students who have a rifle in back of the truck which they will go hunting with after school should not be a problem as far as the Gun Free School Zones Act is concerned.

Sherry Matteucci, U. S. Attorney for the District of Montana, stated it would be her responsibility to bring prosecutions under the Gun Free School Zones Act. The only prosecutions which have been brought in the District of Montana have involved incidents where persons have had guns in a school and have engaged in threatening or assaultive behavior. One of the important parts of making prosecutive decisions is legislative intent, Congressional intent, and common sense. In Montana, people will not be prosecuted who are lawfully driving by a school with a lawful weapon in their vehicles and acting in a lawful manner. This is useless legislation.

CHAIRMAN CRIPPEN asked **Ms. Matteucci** if he were stopped for speeding within 1000 feet from a school zone and the officer noticed a gun in his pickup, what would she do in that case?

Ms. Matteucci stated that situation would not happen. This is a federal offense and the highway patrol would not be writing a ticket on that basis. The Highway Patrol may provide information which would cause her office to investigate. Her recollection of this law is that there is a specific exemption in it for driving on streets and highways.

CHAIRMAN CRIPPEN stated this bill would provide a blanket license by the legislature. He asked if the legislature had the authority to grant a blanket license to everyone in the state?

Ms. Matteucci commented that in her opinion that would not be enforceable. She believed it would be interpreted as a subterfuge to defeat the congressional intent of the legislation and not be upheld.

REPRESENTATIVE CLARK stated that question did not come up in the discussions in the House.

SENATOR LARRY BAER stated that he knows people who live within a 1000 feet of a school who possess firearms. He asked **Ms. Matteucci** if someone could bring a writ of mandamus that would force her to prosecute.

Ms. Matteucci stated that someone could attempt to do that. The protection for people lies within the court determinations in that particular situation. There is no threat under the existing legislation that wholesale prosecutions of people engaged in innocent acts would occur. People have the right to bring into court any number of requests. The decision to go forward with those cases is much more substantively reached.

CHAIRMAN CRIPPEN asked **John Connor, Department of Justice,** if the state could issue a blanket license in this regard?

Mr. Connor stated his initial reaction is that the state could do that and the state has an obligation under the law to defend any enactment which the legislature passes.

SENATOR DOHERTY asked **REPRESENTATIVE CLARK** if any other state had provided a blanket license to its citizens?

REPRESENTATIVE CLARK stated that he was not aware of any other state doing this. He believed we would be breaking new ground.

SENATOR DOHERTY stated that in his handout, **EXHIBIT 1,** Sec. 1702(B)(ii) seems to say that there would have to be an individual verification of the license. Is there any additional information from the legislative history of this law which would indicate that a wholesale grant of a license is allowed versus a case by case licensing?

REPRESENTATIVE CLARK stated he did not know of any.

SENATOR DOHERTY stated the idea of a license is something which can be accepted or denied. About 99% of Montana's population would fall under the terms of that license and most of the population would be licensed without even knowing it. He questioned whether that could be done.

Closing by Sponsor:

REPRESENTATIVE CLARK stated that the fact that not everyone who prosecutes these situations is a common sense type of person is the reason why this bill is needed. Eighty-five percent of Montana homes have at least one firearm in the home. If the gun is in a home, it is exempt also from the Gun Free School Zones Act. Sixty-five percent of Montanans hunt or use firearms and as a result of this, most of us are breaking a federal law.

HEARING ON HB 160

Opening Statement by Sponsor:

REPRESENTATIVE AUBYN CURTISS, House District 81, Fortine, presented HB 160. This bill was drafted because of the growing concern citizens nationwide are expressing about a government which looks the other way while its agents abuse the privilege of their offices. Last fall she heard constituents who were normally worried about job losses, escalating taxes, and regulatory burdens, expressed even more concern about second amendment rights and distrust of their government. She heard Montanans admitting actual fear of unwarranted arbitrary actions of our own government. Montanans trust the officials whom they elect and will be less inclined to react violently to protect themselves from unidentified strangers who threaten them by aggressive behavior.

Proponents' Testimony:

Gary Marbut, President of Montana Shooting Sports Association, Gun Owners of America, Citizens Committee for the Right to Keep and Bear Arms, Western Montana Fish and Game Association, Big Sky Shooting Club, stated their support of HB 160. He manufacturers shooting range equipment which he markets to law enforcement agencies all over the United States. He asked how the agencies get along with federal agencies and officers. He hears mixed reports. Generally, he has heard that the U.S. Marshall works very well with local police. They are courteous, communicative, and cooperative. He has heard similar reports about the FBI. With other federal agencies there seems to be less cooperation and more situations where there are abuses of local people. The sheriff is the chief law enforcement of the county and should be responsible for the security of the people in his jurisdiction. Many times there are activities and operations by federal agencies which the sheriff is not informed about. An example is an incident in Garfield County where the U.S. Fish and Wildlife Service raided a farm couple for possession of eagle feathers. They were acquitted of any wrongdoing. The agents brought CNN with them, but deliberately avoided the sheriff. Another situation occurred in Northern Ravalli County where the IRS staged a dawn raid on the home of a couple. The sheriff was not given any specific information. The 911 center received a

panicked phone call from people stating there were armed people breaking into their home. They wore no uniforms or badges. The sheriff dispatched his deputies. It turned out to be the IRS. There were a dozen people, all with drawn guns, who were attacking the home. The sheriff testified before the House that when his people arrived there was considerable stress while they sorted out who they were dealing with. That situation could have been turned into a blood bath because his deputies were confronted with armed people with guns drawn who wore no badges or uniforms. How were they supposed to know who they were dealing with? This bill, as it was originally introduced in the House, would have required that federal officers seek the written permission of the sheriff before they conduct any arrests, searches, or seizures in the sheriff's jurisdiction. It would not change anything for the federal agencies who currently work well with the sheriff's department and have good communications with them. It would change things for those federal agencies who conduct activities without the knowledge of the sheriff's department. The House amended it to require only 24 hour notification. They are disappointed with that amendment, but would rather have the bill pass in that form than not pass at all. There are several exceptions in the bill where federal officers do not need to get permission or give notification. These exceptions would include: if the federal officer witnessed a crime that required immediate law enforcement activity; if the officer was in close pursuit; if the law enforcement activity was being handled by the border patrol; if the subject of the arrest, search or seizure was an employee of the county sheriff's department or an elected local or state official. There is also a corrupt sheriff provision which states that if the federal officer has reasonable cause to believe that there may be a close connection between the subject and the sheriff's department which may lead to the subject being informed of the pending arrest, search or seizure, then the federal officer may go to the attorney general with his probable cause. They feel there ought to be good communication between federal agencies and the local sheriff who knows the people and conditions involved. The House Committee asked for some documentation about the kinds of situations this measure would affect. He presented the documentation, **EXHIBIT 2.** One of the arguments of HB 160 is that it is unconstitutional. HB 160 does set up a contest between the supremacy clause of the Federal Constitution and the Tenth Amendment. That pendulum seems to be swinging in favor of the Tenth Amendment. There is a landmark case called Lopez before the U. S. Supreme Court. The Court has not yet ruled but Lopez will clarify the state of the art in terms of jurisprudence is in terms of giving authority to the Tenth Amendment and authority to the states.

REPRESENTATIVE MATT BRAINARD, House District 62, Missoula, stated that in the United States the government governs by the consent of the governed. Successful law enforcement depends on two things: good legislation which is supported by the people and enforcement which is fair and equitable in its administration.

Support of law enforcement activity is strongest when it involves locally elected officials who are known and trusted by the community. This legislation will assist federal law enforcement by assuring citizens that federal officials will act in concert with their locally elected and trusted law enforcement personnel. Power corrupts and absolute power corrupts absolutely. Our national liberty depends on the dynamic tension between federal, state and local governments. During the 50s and 60s, the federal government took steps to assure that our civil rights were protected down to the local level. Today it is apparent that local government must also work to protect our civil rights even when the federal government is involved. HB 160 will assist in protecting our civil rights. It will also guarantee better cooperation between local and federal officers because it guarantees communication. You cannot cooperate if you don't know what the other person is going to do. Local officers generally know the physical layout of the community better than federal officials. Many people in Montana live at poorly marked addresses and sometimes there are no maps. By conferring with local officers, federal officers may be spared the embarrassment of raiding the wrong dwelling and quite possibly engaging an innocent citizen with deadly force. HB 160 is good for the people of Montana and it will assist law enforcement, both local and federal. His constituents had problems with the IRS. One morning the IRS arrived at their home with no uniforms, drove unmarked vehicles and proceeded to break into their home. Mrs. Andras called 911. When the sheriff arrived on the scene there was no way for him to tell who these people were and what they were doing. He read a letter which the sheriff sent to the IRS, **EXHIBIT 3.**

Stoney Burk spoke in support of HB 160. He has concerns about the ever growing arrogance and disregard of citizen's rights by the federal government. When we give the government our public trust, we are giving to them the very best of us. He trusts his local law enforcement. He no longer trusts the federal government.

REPRESENTATIVE DICK GREEN, House District 61, Victor, stated this is a new problem in our state. Most Montanans know their sheriff by name. There is a trust with that.

Lorna Frank, Montana Farm Bureau, spoke in support of HB 160. They believe the federal government needs to contact the local authorities before coming into the county.

G. W. Tom Niehardt spoke in support of HB 160. The states had a strong opposition to having a standing federal army. The federal army was to defend the country itself. Each of the states would have their own law enforcement. This involves states rights and federal rights. He has been in law enforcement for 34 years and has always found sheriffs to be cooperative.

Bob Kamena stated he formerly worked on a daily basis with FBI and DEA agents. Most of them were excellent officers. Unfortunately, they take their orders from Washington, D.C. HB 160 is common sense legislation.

REPRESENTATIVE ROBERT CLARK, House District 8, Ryegate, stated that he has been a law enforcement officer for 27 years. What happened in Roundup a week or two ago is the way things should be handled. This case involved federal fugitives. Local law enforcement worked together with federal agencies. We have more than 50 federal law enforcement agencies. They have authority to arrest, search and seize and they all carry guns. This bill is only aimed at a few agencies because of the abuses. This bill does not interfere with any investigation by any federal agencies. It only addresses arrests, searches and seizures.

A. M. "Bud" Elwell, Montana Weapons Collectors Society and the Northwest Arms Collectors, stated that this bill will redirect power. A little power tends to corrupt. Absolute power corrupts absolutely. This bill spreads the power a little thinner so there has to be more cooperation.

Ray Henken urged passage of HB 160. He stated that President Clinton signed an executive order suspending the Fourth Amendment of search and seizure laws, especially for foreign nationals here in the United States. HR 666 has passed which is a weakening of our Fourth Amendment rights, **EXHIBIT 4.** HB 160 is another way of sending a message to the federal government that common citizens are tired of their treatment by the federal government.

Vern C. Knopf presented his written testimony, **EXHIBIT 5.**

Chris Mehus, Montana Stockgrowers Association, urged passage of HB 160.

Opponents' Testimony:

REPRESENTATIVE JIM ELLIOT, House District 51, Trout Creek, stated that the area he represents is the home of the co-founder of the Militia of Montana. No one supports arrogance in any law enforcement agency. All law enforcement agencies are guilty of arrogance to some extent and none of this arrogance should be condoned. The basis for this bill is built on misinformation and misconceptions. He lives near Idaho where the Randy Weaver family was held under siege by members of the federal government. He called Gene Arnold, his local sheriff and was told that if the federal government makes an arrest, they always let him know. He called the Lincoln County Sheriff, Ray Nixon. The federal government has been cooperative and he felt that requiring permission would hinder their operation. He called the Sheriff of Boundary County, where the Ruby Ridge incident occurred, and was told that the federal government was in touch with him constantly during the Ruby Ridge incident. In reference to the comments about the Andras Family who were supposedly awaken at

4:00 a.m., he read from the Ravalli Republic which stated that the IRS sent a six person team to the Andras home at 7:45 a.m. about an hour after they notified the Ravalli County Sheriff's Dispatch Center that they were commencing a search warrant procedure in Ravalli County. This bill is brought based on a great deal of misinformation.

John Connor, Department of Justice, spoke in opposition to HB 160. Their agency comprises a number of investigate agencies relating to criminal investigative duties as well as county prosecutor services. His job is to provide training, prosecution, and trial assistance to county attorneys throughout the state of Montana. They often work with state, federal and local law enforcement officials. The bill presents some practical problems, especially to prosecutors, with respect to construction. On page 2, lines 16 and 18, it states the attorney general shall take appropriate action to protect the rights of citizens in the county. This follows the provision concerning notice to the attorney general. He doesn't know what sort of action is contemplated by that language. He also does not know what citizens they are mandated to protect and what it is that they are to protect them from. Section 3 (1) states that federal officials must be prosecuted if they violate the terms of the bill, but prosecution is a discretionary act. Prosecutors are vested with considerable discretion in terms of whether to file criminal charges because of the substantial burden of proof involved. You can not prosecute a criminal case without probable cause and you are ethically obligated not to file a case unless you believe a conviction can be obtained. Further on it states that prosecution is discretionary. Section 3 also states the individual violating the law must be charged with a crime. The bill does not delineate what the crime is which the individual is supposed to be charged with. Would this be a felony or a misdemeanor? What is the punishment? If the crime carries a potential jail sentence, then the state is obligated to prove one of the three mental states, whether it is purposely, knowingly, or negligently. None of those are specified. In terms of charging someone, it must be specified in the charge itself the court in which it is to be filed and the language of the offense is to be stated in concise, clear language. It must also specify whether it is a felony or misdemeanor as well as the time and place of the offense and the rule of law which the defendant is purported to have violated. The defendant also must be advised as to the nature of the penalty for the charge. None of that is in the bill. There is significant concern with this bill in light of current federal law. In 28 U.S.C. §1442 states that if a criminal action is commenced in state court, a federal officer acting within the scope of his or her authority has the right to have that action removed to federal court for prosecution. This would present considerable expense to the county. The damage which this bill would do toward federal/state interaction, cooperation, and communication is considerable. They are in contact frequently with federal agencies. Communication would be much more beneficial than mandating by statute that a federal

officer has to take a particular action. They work with federal agencies on a daily basis. They share information and obtain their help when needed. There is a growing tension in this state between government officials and those who are dissatisfied with their government. The last thing we need to do is drive a further wedge between the capacity to communicate with state and federal agencies.

Chuck O'Reilly, Sheriff of Lewis and Clark County, stated the necessary ingredients for good law enforcement would be the support of the people and good laws. The other ingredient which is essential is cooperation. He has 30 years experience in the law enforcement system. He shares the concerns of the proponents but he does not feel that this bill will solve the problems. It will drive a wedge between local and federal law enforcement agencies. Agencies are run by humans; humans do make mistakes at all levels.

Tim Shanks, Montana Police Protective Association, stated their opposition to HB 160. Many departments have a good working relationship with the federal agencies. Unfortunately the media covers the federal agencies high profile mishaps and we do not hear about the many operations which are successful. This bill would place an unnecessary restriction on federal agencies and their agents.

Bill Strizich, United States Marshall for the District of Montana, stated that he has never seen a more counter productive legislation. This legislation is unconstitutional and simplistic and is aimed at problems which are grounded in a mistrust of government in general. There have been tragic events in the past few years related to the conduct of enforcement of our laws. Extreme circumstances and tactical misjudgments cannot be remedied by spurious legislation. This bill is unworkable from a practical standpoint. If the proponents want the state's rights issue tested in court, a fiscal note should be attached to this bill demonstrating the cost of defending this in the Supreme Court. The stated purpose of HB 160 is to ensure maximum cooperation between federal employees and local law enforcement. No legislation will ever replace common sense, courtesy and basic good manners. No federal agency can expect to operate without full cooperation from local law enforcement. Federal agencies are bound by strict standards of conduct and operational policy. Violations of law in the course of the conduct of law enforcement is not allowed. There are serious consequences for those violations.

Judy Browning, Governor's Office, spoke in opposition to HB 160. She spoke on the difficulties this bill has with the Federal Constitution. Acts of state legislators which interfere with or are contrary to the laws of Congress when made in pursuance of the Federal Constitution are invalid under the supremacy clause. This means that state law is preempted to the extent that it conflicts with federal law or is an obstacle to the

accomplishment of the objectives of Congress or imposes upon the performance of federal activity conditions which have not been contemplated by Congress. The language in HB 160 violates the Federal Constitution for two specific reasons. The first reason is that it imposes conditions upon federal law enforcement officials which have not been contemplated by Congress. This is not a field which Congress has not entered. Federal law enforcement, federal criminal law, whether substantive or procedural, is an area that Congress has spoken in. The federal court decisions show that states are not permitted to impose conditions upon discipline of lawyers when practicing in federal forums within state boundaries. Federal officials who are about to construct federal facilities, cannot be required to show their plans to state officials before construction. Confidentiality of documents cannot be required, even though state law may provide for that, if, in fact, it is a federal grand jury whose rules require the disclosure of those documents. Federal law officials cannot be required to provide 24 hour written notice to local law enforcement before an arrest, search or seizure is made. The second reason that HB 160 violates the supremacy clause is because it subjects federal law enforcement officials to prosecution. Federal court decisions conclude this is not permissible under the supremacy clause. You cannot hold federal law enforcement subject to prosecution if they are acting under authority of federal law, the act was part of their duties, and they did no more than was necessary or proper.

Mike Batista, Administrator of Law Enforcement Services Division of the Department of Justice, stated that several years ago, then Attorney General Marc Racicot, with advice of Law Enforcement Advisory Council, formulated a policy recognizing the need to communicate and coordinate investigations in the state. That policy is known as an investigative protocol policy. That policy outlines procedures for federal, state and other local law enforcement agencies when conducting an investigation or conducting arrests in the county. It requires them to notify the chief law enforcement officer of that county prior to making arrests or upon initiation of investigation in that county. All local law enforcement, state law enforcement, and federal agencies are aware of this policy and it has been adopted as administrative rules of Montana. If a federal agency goes into a county and the chief law enforcement officer of that county feels there is a violation of investigative protocol policy, there is a mechanism in place whereby a complaint can be filed with the attorney general's office who can conduct a review and investigation of that allegation and take whatever appropriate action is necessary to insure compliance with the investigative protocol policy.

Christine Kaufman, Executive Director of the Montana Human Rights Network, stated their support of increased coordination between federal and local law enforcement officials. They recently put out a briefing asking for that kind of coordination. They acknowledge there have been errors in judgment with law

enforcement proceedings. HB 160 grows out of the paranoia of groups like the Freemen and the Militia that the federal government is our enemy which is out to get us with black helicopters.

Sherry Matteucci, U. S. Attorney for the District of Montana, stated this legislation is an attempt to address a phantom problem. The cooperative efforts of law enforcement agents at every level is not only extremely important, it is extremely effective. No law enforcement agency can work in a vacuum in a state like Montana. Matters of courtesy cannot be legislated. She does not oppose the ideas which prompted this legislation. There are a number of organized structures which provide for a very effective joint operation in the District of Montana. There are eight drug enforcement task forces which are multi-county and multi-agency with federal, state, and local representation. We also have an organized crime drug enforcement task force on the federal level, which allows any local and state law enforcement agency to bring cases to the federal system for joint investigation and prosecution. There are also task forces to address problems of broad concern in the District of Montana such as children's justice issues, violence against women, and activities of anti-government activists. Another way in which the cooperative efforts are very effective for the citizens of Montana has to do not only with physical communication but with other aspects of mutual efforts. The Department of Justice and the U.S. Attorney's Office spends over half a million dollars a year in the District of Montana providing for cooperative training for all law enforcement agents and professionals as well as their support staff. They bring in training from the FBI lab which serves the interests of all of the people of Montana. The U.S. Attorney's Office also prosecutes cases which are developed by state agents. In those joint investigations and prosecutions, many times there are violations of federal law which allow the cooperative efforts of the federal court system. Last year there was a 26 defendant marijuana network prosecution which was brought through her office with the assistance of state and local agents. That case took two months to prosecute and the cost of that prosecution was $25,000 a day. Not very many county or local budgets could absorb the expense of that kind of case. All of the federal law enforcement agents which are being addressed by this legislation are citizens of Montana as well. On a rare occasion an agent from one of the departments or agencies who does not live in Montana, will come in for an operation. In that occasion it is more important and certain that there will be appropriate cooperation and communication with the local law enforcement officials. They are fundamentally opposed to the concept of mandatory requirements. She presented her written testimony, **EXHIBIT 6.**

Brad Martin, Director of the Montana Democratic Party, spoke in opposition to HB 160. This bill creates a troubling wedge between federal and state agencies. There are many good examples of good cooperation particularly on drug enforcement task forces.

Law enforcement agencies are made up of humans who struggle very hard to be good, effective organizations representing the needs of Montanans both on the federal and state level.

David Henion, Montana Association of Churches, stated they have a history of speaking out against those who would advocate taking away the rights of individuals based on race, religion, or other beliefs. Whether intended or not, they believe that this bill begins to play into the hands of those by their association with groups who have made those kinds of statements and attempt to take away the rights of others who advocate that.

Informational Testimony:

Questions From Committee Members and Responses:

SENATOR DOHERTY asked **Mr. Marbut** what the words "actively ceded to the United States of America by a Montana statute" meant as used on page 1, line 26.

Mr. Marbut stated there are sections of the Montana Code which state that jurisdiction over certain delineated geographical areas of Montana are ceded to the federal government. An example would be Malstrom Air Force Base or Glacier National Park.

SENATOR DOHERTY stated this would then be an exception that this would not take place on a federal enclave which has been actively ceded. What about federal enclaves which the federal government has reserved to itself as opposed to having an active ceding by the State of Montana? This would include places where there has been no affirmative action by the state to cede its jurisdiction to the federal government. This would be Forest Service lands, BLM lands, and certain Indian Reservations which have all been reserved by the federal government. Under the wording of this bill, this legislation would apply to those federal enclaves and not to other federal enclaves.

Mr. Marbut stated that was their intention. In the letter from the ACLU to the president documenting a history of abuses by federal officers, a predominant number of those were on Indian Reservations and committed by the BIA. He discussed this with sheriffs who have co-jurisdiction in Indian Reservations and they felt that in order to be able to deal with these situations it would be important not to exclude from the bill those kinds of lands including Indian Reservations. It is their assumption that those areas, Forest Service areas, BLM areas, Indian Reservations, would be included within the intent and effect of the measure.

SENATOR DOHERTY asked **Ms. Matteccui** if there would be any logical connection between the state wanting its writ to run on certain federal lands and stating it will not have its writ run on other federal lands.

Ms. Matteccui stated she could not see any.

SENATOR HOLDEN stated that the sheriffs basically are asking for a phone call from a federal agent. He suggested removing Section 3 and taking out some of the written notice provisions on page 2.

Mr. Connor stated the prosecution section is a concern to them and it is unworkable. What concerns him about the rest of the bill is that if it is mandated by law that a federal agency communicate ahead of time to a sheriff when a federal arrest will be made, it presents some potential situation for factual difficulties to occur. In a crucial time frame situation, he would hate to tie the hands of federal agents. He stated that sheriffs have mentioned to him a concern where federal officers were in their county conducting undercover operations and they did not know about it. If a citizen had reported it to them, it could have resulted in an ugly situation. It is necessary to cooperate on a regular basis. They have authority for their investigators to conduct investigations without the permission of the sheriff in drug and organized crime related situations. It has been the practice and the policy of their operation not to do that. There are unique circumstances because of a potential leak in the sheriff's office where giving that information as a condition to going in may create some security problems and potential danger to those officers conducting the operation. It is important to encourage; it might create some risks to mandate.

SENATOR BARTLETT asked **Mr. Batista** about an investigative protocol which was established by the Department of Justice. She questioned whether that was in rules or simply a policy statement?

Mr. Batista stated it had been adopted as administrative rules in Montana. It was a policy which was established by the Law Enforcement Advisory Council.

SENATOR BARTLETT asked if there would be any benefit to codifying it?

Mr. Batista stated he did not see any benefit.

SENATOR BARTLETT asked **REPRESENTATIVE CURTISS** about the purpose section of the bill wherein it related to part of the purpose being to prevent misadventures affecting Montana citizens and its rights. She asked if in addition to rights, Montana citizens have obligations to be law abiding?

REPRESENTATIVE CURTISS stated that they do.

SENATOR BARTLETT stated there were a number of instances mentioned in testimony and asked what caused those individuals to come to the attention of federal agents?

REPRESENTATIVE CURTISS stated she was not familiar with the incident in Garfield County but understood it was an employee who had been discharged and made allegations against them. These are allegations only. These people are treated as criminals when actually they are innocent and probably will never be proven guilty of anything.

SENATOR BARTLETT stated that if the purpose of the legislation is to prevent misadventures that in addition to talking about the obligations of the law enforcement agencies they need to also address the obligations of citizens. She asked why that aspect of this mutual partnership was not included in this bill?

REPRESENTATIVE CURTISS stated that she assumes that citizens are law abiding until it is proven otherwise.

SENATOR BAER stated the **U.S. Marshall** made some statements that this bill would be counterproductive to communication between federal and other law enforcement officers. He also stated that the basis for this problem lies in a general mistrust of government by its people and also that people who challenge violations of state's rights or would seek interpretation and determination of the Tenth Amendment should pay for this out of their own pockets and take this funding from taxpayers.

Bill Strizich, U.S. Marshall, commented that counter productivity would be in communication and the enforcement of law. The bill is obstructionism. There is no reason anyone should be censored for discussing mistrust of government. This bill would create litigation. That is an unreasonable use of this process. If this bill is going to challenge law and establish a state's right issue, it should have a fiscal note on it.

SENATOR BAER stated there are some atrocities which have taken place in regard to misbehavior and misadventure. How could this behavior be mitigated if not by a bill like this?

Mr. Strizich stated there are many avenues of redress for violations of civil rights. If we have problems with any federal agency, most of us have an open communication with our Senators and Congressman. You can't legislate good manners and common sense.

SENATOR JABS asked **Mr. Batista** what the procedure would be if the policy of investigative protocol was not followed by an agency. Has it been implemented in the cases brought up by the proponents?

Mr. Batista stated he was not aware of any of the cases cited in the testimony being referred to the attorney general's office for review to make a determination of whether or not there had been a violation of the investigative protocol policy? The rules provide that in the event that someone violates that policy, a complaint is filed by that chief law enforcement officer which

goes before the Law Enforcement Advisory Council which will review the situation, conduct an investigation and then make a recommendation to the attorney general who has the authority in the rules to address the problem however he sees fit.

SENATOR DOHERTY asked about two of the handouts distributed to the committee. He asked for explanation of the articles from the "Spotlight" and the "Montanan".

REPRESENTATIVE CURTISS stated the Montanan is a local paper.

Mr. Neihart explained the "Spotlight" is a populist newspaper published in Washington, D.C. since 1965.

SENATOR DOHERTY stated the bill draft request stated that the requester was told by phone and **Mr. Marbut** by letter that the whole bill is clearly in violation of the U.S. Constitution and thus invalid and of no effect if it passes. He asked the sponsor why she pursued the bill?

REPRESENTATIVE CURTISS stated she pursued the bill because she believes that we serve under a system of dual federalism and that the supremacy of the United States over state's rights has not been defined by the courts. Arizona has set aside a million dollars for constitutional defense counsel to accomplish this. Oklahoma has passed a bill which requires their Department of Revenue to withhold all tax monies owed the federal government by Oklahoma taxpayers in case sanctions are placed against Oklahoma and they will not be relinquished until after the sanction has been lifted.

SENATOR BARTLETT asked **Mr. Marbut** what publication he quoted in his testimony regarding the Weaver incident?

Mr. Marbut stated that was a news story distributed by the Howard Skrips News Service.

CHAIRMAN CRIPPEN stated his concern of driving a wedge between federal and state law enforcement agencies. He asked **REPRESENTATIVE CLARK** to comment on that concern and also to suggest a way of amending the bill to provide for notification without stringent requirements.

REPRESENTATIVE CLARK stated that the vast majority of federal law enforcement agencies are not guilty of things which have happened in the past. There are federal agencies who will oppose this. He was never aware of the protocol mentioned earlier. He questions how many sheriffs in this state are fully aware of what that protocol does. He doesn't feel this bill will drive a wedge between state and federal agencies. Some agencies would have a problem with this. He listed BATF and IRS as the agencies who abuse this situation.

CHAIRMAN CRIPPEN stated the objections seemed to be focusing on two or three agencies. He asked **Ms. Matteucci** what authority she had over these agencies within her jurisdiction both before and after the fact?

Ms. Matteucci stated she has quite broad authority over certain aspects of the agencies operations. Her responsibility is to set district policy on how operations are to be brought to her office for prosecution. She works closely on a daily basis with each one of the federal agencies which has been mentioned in this testimony. Each of these agencies will feel that this is a repudiation of their efforts to communicate and coordinate with local law enforcement, should this bill pass. She believes that an important message has been sent to the federal government.

CHAIRMAN CRIPPEN asked **Ms. Matteucci** if she would issue a written directive to those agencies outlining the problems which had been testified to by the proponents and asking them to come up with recommendations to alleviate this problem.

Ms. Matteucci stated she had done so verbally and that perhaps a written exercise would be useful.

SENATOR ESTRADA stated that the main purpose of this bill was simply a phone call. She felt this would benefit the federal agencies as well.

Ms. Matteucci commented she completely agreed with that concept and 99% of the time that is exactly what happens. To legislate it is counter productive, ineffective, unenforceable and does not serve the interest it is trying to serve. Their objections are based on the following: certain exigencies of particular situations; the requirements of an investigation or pursuit; information which would make it inappropriate to involve the local law enforcement in a particular situation; and there are also circumstances where someone may forget. However, to adopt legislation that repudiates the good intentions and acts and the longstanding relationships between law enforcement, does not serve what this legislation seeks to accomplish.

Closing by Sponsor:

REPRESENTATIVE CURTISS presented testimony from Sheriff Bruce Whittaker, **EXHIBIT 7,** and an article referring to the Fourth Amendment, **EXHIBIT 8.** This article comments that Congress has weakened the provisions of the exclusionary rule to provide that agents no longer need warrants for arrest procedures. If Congress in examining the weakening of the exclusionary rule, exempts the BTAF and the IRS agents from those provisions, it clearly demonstrates that Congress has a problem with the actions of these agents. This bill is about fourth amendment rights. She feels the wedge between law enforcement agencies is there already. She read a letter from Congressman James Hansen to Attorney General Janet Reno, **EXHIBIT 9.**

ADJOURNMENT

Adjournment: The meeting adjourned at 12:00 p.m.

SENATOR BRUCE D. CRIPPEN, Chairman

JUDY J. KEINTZ, Secretary

BC/jjk

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MONTANA SENATE
1995 LEGISLATURE
JUDICIARY COMMITTEE

ROLL CALL DATE 3/17/95

NAME	PRESENT	ABSENT	EXCUSED
BRUCE CRIPPEN, CHAIRMAN	✓		
LARRY BAER	✓		
SUE BARTLETT	✓		
AL BISHOP, VICE CHAIRMAN	✓		
STEVE DOHERTY	✓		
SHARON ESTRADA	✓		
LORENTS GROSFIELD	✓		
MIKE HALLIGAN			✓
RIC HOLDEN	✓		
REINY JABS	✓		
LINDA NELSON	✓		

SEN:1995
wp.rollcall.man

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 1
DATE 3/17/93
BILL NO. HB 332

pursuant to Federal law and funding under subsection (a)(3), a private entity shall—

"(A) be located in a district that has been designated as needing additional Federal detention facilities pursuant to paragraph (1);

"(B) meet the standards of the American Correctional Association;

"(C) comply with all applicable State and local laws and regulations;

"(D) have approved fire, security, escape, and riot plans; and

"(E) comply with any other regulations that the Marshals Service deems appropriate.

"(3) The United States Marshals Service shall provide an opportunity for public comment on a contract under subsection (a)(3).".

n-Free School
es Act of
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JSC 921 note

SEC. 1702. GUN-FREE SCHOOL ZONES ACT OF 1990.

(a) SHORT TITLE.—This section may be cited as the "Gun-Free School Zones Act of 1990".

(b) PROHIBITIONS AGAINST POSSESSION OR DISCHARGE OF A FIREARM IN A SCHOOL ZONE.—

(1) IN GENERAL.—Section 922 of title 18, United States Code, is amended by adding at the end the following new subsection:

"(q)(1)(A) It shall be unlawful for any individual knowingly to possess a firearm at a place that the individual knows, or has reasonable cause to believe, is a school zone.

"(B) Subparagraph (A) shall not apply to the possession of a firearm—

"(i) on private property not part of school grounds;

"(ii) if the individual possessing the firearm is licensed to do so by the State in which the school zone is located or a political subdivision of the State, and the law of the State or political subdivision requires that, before an individual obtain such a license, the law enforcement authorities of the State or political subdivision verify that the individual is qualified under law to receive the license;

"(iii) which is—

"(I) not loaded; and

"(II) in a locked container, or a locked firearms rack which is on a motor vehicle;

"(iv) by an individual for use in a program approved by a school in the school zone;

"(v) by an individual in accordance with a contract entered into between a school in the school zone and the individual or an employer of the individual;

"(vi) by a law enforcement officer acting in his or her official capacity; or

"(vii) that is unloaded and is possessed by an individual while traversing school premises for the purpose of gaining access to public or private lands open to hunting, if the entry on school premises is authorized by school authorities.

"(2)(A) Except as provided in subparagraph (B), it shall be unlawful for any person, knowingly or with reckless disregard for the safety of another, to discharge or attempt to discharge a firearm at a place that the person knows is a school zone.

"(B) Subparagraph (A) shall not apply to the discharge of a firearm—

"(i) on private property not part of school grounds;

"(ii) as part of a program approved by a school in the school zone, by an individual who is participating in the program;

"(iii) by an individual in accordance with a contract entered into between a school in a school zone and the individual or an employer of the individual; or

"(iv) by a law enforcement officer acting in his or her official capacity.

"(3) Nothing in this subsection shall be construed as preempting or preventing a State or local government from enacting a statute establishing gun-free school zones as provided in this subsection.".

(2) DEFINITIONS.—Section 921(a) of such title is amended by adding at the end thereof the following new paragraphs:

"(25) The term 'school zone' means—

"(A) in, or on the grounds of, a public, parochial or private school; or

"(B) within a distance of 1,000 feet from the grounds of a public, parochial or private school.

"(26) The term 'school' means a school which provides elementary or secondary education, as determined under State law.

"(27) The term 'motor vehicle' has the meaning given such term in section 10102 of title 49, United States Code.".

(3) PENALTY.—Section 924(a) of such title is amended by adding at the end thereof the following new paragraph:

"(4) Whoever violates section 922(q) shall be fined not more than $5,000, imprisoned for not more than 5 years, or both. Notwithstanding any other provision of law, the term of imprisonment imposed under this paragraph shall not run concurrently with any other term of imprisonment imposed under any other provision of law. Except for the authorization of a term of imprisonment of not more than 5 years made in this paragraph, for the purpose of any other law a violation of section 922(q) shall be deemed to be a misdemeanor.".

(4) EFFECTIVE DATE.—The amendments made by this section shall apply to conduct engaged in after the end of the 60-day period beginning on the date of the enactment of this Act. 18 USC 921 not

(5) GUN-FREE ZONE SIGNS.—Federal, State, and local authorities are encouraged to cause signs to be posted around school zones giving warning of prohibition of the possession of firearms in a school zone. 18 USC 922 not

SEC. 1703. REPORT ON MANDATORY MINIMUM SENTENCING PROVISIONS.

(a) REPORT.—Not less than six months after the date of enactment of this Act, the United States Sentencing Commission shall transmit to the respective Judiciary Committees of the Senate and House of Representatives a report on mandatory minimum sentencing provisions in Federal law.

(b) COMPONENTS OF REPORT.—The report mandated by subsection (a) shall include:

(1) a compilation of all mandatory minimum sentencing provisions in Federal law;

(2) an assessment of the effect of mandatory minimum sentencing provisions on the goal of eliminating unwarranted sentencing disparity;

(3) a projection of the impact of mandatory minimum sentencing provisions on the Federal prison population;

HB 332

SENATE JUDICIARY
EXHIBIT NO. 2
DATE 3/17/95
BILL NO. HB 160

SPECIAL REPORT

Reprinted from The Gun Owner, published by Gun Owners of America

BATF THUGS STRIKE AGAIN

The lives of Harry and Theresa Lamplugh were turned upside down on the morning of May 25, 1994. Early that day, fifteen to twenty armed men and women burst into their rural Pennsylvania home. Under the threat of violence, the Lamplughs cooperated with the intruders completely as they opened safes, locks and cabinets. In spite of their compliance, however, Harry and Theresa were treated with utter contempt. Throughout the ordeal, a fully automatic machine gun was intermittently thrust in both their faces.

The Lamplughs watched in horror as the thugs literally trashed their house. Furniture was overturned or smashed, and papers were scattered everywhere. Three pet cats were ruthlessly killed-one literally stomped to death. The gang ransacked their house for more than six hours. When they finally left, Harry and Theresa stood confused and angry in the midst of their demolished home.

The brutal and inhumane events that you have just read about are not fiction. They were taken from the testimony of Harry and Theresa Lamplugh. Only the intruders were not some violent street gang or foreign terrorists; they were agents of the Bureau of Alcohol, Tobacco and Firearms (BATF), and the Internal Revenue Service (IRS).

Why would two Federal agencies send a small battalion of agents to terrorize this couple in the supposed safety of their home? What terrible crime did Harry and Theresa Lamplugh commit that prompted this brutal six and a half hour ordeal? Shockingly, there are no good answers to these questions.

Harry Lamplugh, however, is in the politically incorrect business of promoting gun shows. His organization, Borderline Gun Collectors Association, happens to be the largest gun show promoter in the northeast. As anyone who has ever attended a gun show knows, there are more than firearms and accessories on display. A gun show is also a place where people of common interests meet to express their political views and share opinions. Not surprisingly, criticism of the BATF runs deep at such a forum. And it is no secret that the BATF spends considerable time and effort infiltrating these shows.

Since gun show infiltration is a massive undertaking that yields relatively small returns, the BATF has now honed in on a primary source, Harry Lamplugh. On May 23, 1994, the agencies obtained a search warrant authorizing both the BATF and the IRS to "search" the Lamplugh home. Included in the list of items to be seized were any firearms, ammunition, holsters, cleaning kits, gun cases, and firearm accessories. The Lamplughs' attorney points out that the warrant failed to name even one specific item. "Such warrants are vague, overbroad, and therefore unconstitutional", he said.

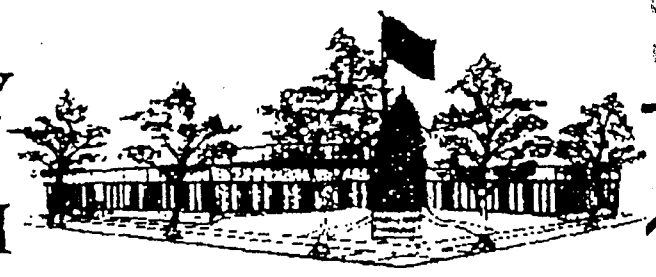
The agents also seized complete financial and business records of the Borderline Gun Collectors Association from 1988 to the present. This included all computer records and any other documents related to the sale and purchase of firearms. Obviously, the BATF was on some sort of "fishing expedition". But the most amazing aspect of the warrant is what was not on it. There was no reference to any crime by any person. The BATF appears to hold not only the Second Amendment in disdain, but the Fourth as well.

On Wednesday, May 25, 1994, the search warrant was executed. At about eight in the morning, Harry answered a l ents. His wife was in the bathroom at pajama bottoms having his morning ere, but they had my house secured i

The original of this document is stored at the Historical Society at 225 North Roberts Street, Helena, MT 59620-1201. The phone number is 444-2694.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 3
DATE 3/17/95
BILL NO. HB160

COUNTY OF RAVALLI



STATE OF MONTANA

The Bitterroot Valley

Hamilton, Montana 59840

NOVEMBER 24, 1993

LARRY HUGGINS, SPECIAL AGENT
INTERNAL REVENUE SERVICE
800 KENSINGTON
MISSOULA, MT. 59801

RE: SEARCH WARRANT EXECUTION - MARC ANDRA

DEAR LARRY:

I AM TAKING THIS OPPORTUNITY TO EXPRESS MY DISPLEASURE AT THE MANNER IN WHICH YOUR SEARCH WARRANT EXECUTION IN RAVALLI COUNTY WAS HANDLED.

I DO NOT TAKE ISSUE WITH THE LEGALITY OF YOUR WARRANT OR YOUR AUTHORITY TO EXECUTE IT, NOR DO I CARE TO BE INVOLVED IN YOUR INVESTIGATION. I DO, HOWEVER, TAKE ISSUE WITH THE SEEMING LACK OF COMMUNICATION YOUR AGENCY EXHIBITED TOWARDS MY OFFICE. YOU NOTIFIED MY DISPATCHER AT 0645 THAT YOU WOULD BE IN MY COUNTY SERVING A SEARCH WARRANT AND PROMPTLY AT APPROXIMATELY 0745 MY OFFICE GETS A FRANTIC 911 CALL FROM THE ANDRAS.

WHERE I HAVE A PROBLEM, IS YOUR LACK OF COMMUNICATION TO ME AND YOUR APPARENT UNWILLINGNESS TO COORDINATE WITH MY OFFICE. I EXPECT TO BE NOTIFIED IN A TIMELY MANNER WHEN ANY OUTSIDE AGENCY CONDUCTS AN OPERATION OF THIS TYPE IN THIS COUNTY. I THEN EXPECT TO BE INVOLVED UP-FRONT, NOT AFTER THE FACT.

I HAVE ALWAYS COOPERATED WITH OTHER AGENCIES, YOURS INCLUDED, TO EVERY EXTENT POSSIBLE AND IF YOU OR YOUR AGENCY DISTRUST ME OR HAVE REASON TO BELIEVE I WOULD COMPROMISE YOUR INVESTIGATION, YOU HAD BETTER DISCUSS IT WITH ME.

RAVALLI COUNTY SHERIFF
205 BEDFORD, BOX 5022, HAMILTON, MT 59840
(406)363-3033, FAX (406)363-7599

I=SUSPECT THAT YOU KNEW WHO YOU WERE DEALING WITH, AND TO CONDUCT AN EARLY MORNING RAID IN CIVILIAN CLOTHES, IN UNMARKED VEHICLES WITHOUT THE INVOLVEMENT OF MY OFFICE WAS FOOLHARDY. I AM NOT SURE YOUR AGENCY NEEDS THE NEGATIVE PUBLICITY THAT A SHOOTING INCIDENT WOULD INVITE, CONSIDERING THE CONDITIONS YOU WERE FACED WITH THE OTHER DAY.

IN VIEW OF THE FACT THAT I AM THE DULY ELECTED SHERIFF/CORONER IN THIS COUNTY, AND IN VIEW OF MY 21 YEARS OF EXPERIENCE DEALING WITH THE CITIZENS OF THIS COUNTY, I AM GOING TO DEMAND A LITTLE PROFESSIONAL COURTESY FROM YOU AND YOUR AGENCY, OTHERWISE WE WILL BE AT ODDS. MY INTENT IS NOT TO SOUND ARROGANT, HOWEVER, I WILL NOT STAND MUTE ON MATTERS SUCH AS THIS.

IF WE CAN WORK THIS OUT, I DON'T INTEND TO TAKE THIS ANY FURTHER. IF NOT, LET ME KNOW.

SINCERELY,
RAVALLI COUNTY SHERIFF'S OFFICE

JAY PRINTZ, SHERIFF/CORONER

HB160

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 4
DATE 3/17/95
BILL NO. HB160

Union Calendar No. 7

104TH CONGRESS
1ST SESSION

H. R. 666

[Report No. 104–17]

To control crime by exclusionary rule reform.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 25, 1995

Mr. MCCOLLUM introduced the following bill; which was referred to the Committee on the Judiciary

FEBRUARY 2, 1995

Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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A BILL

To control crime by exclusionary rule reform.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Exclusionary Rule Reform Act of 1995".

SEC. 2. ADMISSIBILITY OF CERTAIN EVIDENCE.

(a) IN GENERAL.—Chapter 223 of title 18, United States Code, is amended by adding at the end the following:

"§ 3510. Admissibility of evidence obtained by search or seizure

"(a) EVIDENCE OBTAINED BY OBJECTIVELY REASONABLE SEARCH OR SEIZURE.—Evidence which is obtained as a result of a search or seizure shall not be excluded in a proceeding in a court of the United States on the ground that the search or seizure was in violation of the fourth amendment to the Constitution of the United States, if the search or seizure was carried out in circumstances justifying an objectively reasonable belief that it was in conformity with the fourth amendment. The fact that evidence was obtained pursuant to and within the scope of a warrant constitutes prima facie evidence of the existence of such circumstances.

"(b) EVIDENCE NOT EXCLUDABLE BY STATUTE OR RULE.—

"(1) GENERALLY.—Evidence shall not be excluded in a proceeding in a court of the United States on the ground that it was obtained in violation of a statute, an administrative rule or regulation, or a rule of procedure unless exclusion is expressly authorized by statute or by a rule prescribed

by the Supreme Court pursuant to statutory authority.

"(2) SPECIAL RULE RELATING TO OBJECTIVELY REASONABLE SEARCHES AND SEIZURES.—Evidence which is otherwise excludable under paragraph (1) shall not be excluded if the search or seizure was carried out in circumstances justifying an objectively reasonable belief that the search or seizure was in conformity with the statute, administrative rule or regulation, or rule of procedure, the violation of which occasioned its being excludable.

"(c) RULE OF CONSTRUCTION.—This section shall not be construed to require or authorize the exclusion of evidence in any proceeding.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 223 of title 18, United States Code, is amended by adding at the end the following:

"3510. Admissibility of evidence obtained by search or seizure.".

EXHIBIT NO. 5
DATE 3/17/95
BILL NO. HB160

Elliston, Montana
Feb. 27th, 1995

From Vern C. Knopff
P. O. BOX 207
Elliston, Montana 59728
ph.# 406-442-1131

Honorable Dick Armey
Wash. D. C.

Re: IRS TACTICS AND
ILLEGAL ACTS:

Dear Sir:

I have listened to you on G. G. Liddy Show and I understand that you are working on a plan to eliminate the IRS,and replace them with a fair Flat Tax or a Consumption Tax. I prefer a Cunsumption Tax,as this would irradicate the Malicious system altogether and be fair to all people.

My wife and I have a horendous story to tell what the IRS did to us elderly citizens on Oct 30th, 1985. and are still harrassing us today. They attacked us at our log home near Elliston, Montana with a 30 member SWAT TEAM made up of 7 U. S. Marshalls, Hiway Patrol, & others. Ronald B. Phillips of Eugene, Oregon led the attack. circumvented our Powell county Sherriff,Dave Collings and descended on us by a National Guard Copter, appeared at our door disguised as LOST HUNTERS. They never informed us who they were. They hid behind trees and used Bull Horns shouting at us to come out of our home or they would BLOW us out. My wife was scared to death. and told them they were tresspassing to get out... Kept us hostage for nearly 4 hours til my wife radioed our Deputy Sherriff at Deer Lodge, Mont.and he came and took charge.The Agents held him up for 1/½ hrs Then the Deputy let two Marshalls in and they said that they had information that we had Machine guns and automatic weapons. I said that is a DAMN LIE as I had not even ever seen a machine gun or a automatic weapon of any kind. I demanded that they inspect all our old regular guns hanging on the wall, BUT the two Marshalls would not even look at them. We had Deputy Haugie, a Lawyer and a Minister AS witnesses in our house.They showed us a reduced copy of a Warrant and said that we had not filed certain Taxes.and took us to wrong Lewis & Clark county Jail. and promised us we would be back in our beds that nite. HUH, we were placed in jail. We live in Powell county.Wrong jail. They treated us as violent criminals. They never had any supporting Affidavit in writing stating any cause or who our accusers were, Totally Illegal. No Due Process.They took us to a fed bldg. and Mug shot us and finger printed us,many questions about all our relations etc. We found out later that a Chuck and Carol Williamson of Brookings, Oregon signed a Perjured False Affidavit that we had Machine Guns and Automatic Weapons.We had a copy of their Affidavit later.Also these people had not filed any tax returns for several years and they owed the IRS $150,000.00, BUT the IRS never did do any prosecuting of them,or make them pay. The IRS no doubt forgave their Taxes in exchange for their many LIES and perjured affidavit about us. So IRS used them as INFORMERS, Totally False at that.

We had purchased a Dahlstrom Trust in 1977 from a legal Bonded and Licensed Financial Planner in Bellvue, Washington and had everything we owned deeded in to this Trust . We were in Mining for many years and had not made any profits up until 1982. In the Mean time the IRS had taken Dahlstrom to court on selling these Trusts. Dahlstrom won the case in 1983 along with 4 of his salesmen. One of these sold us our trust,was Dave Morris Morris gave the IRS Agent Roger Wirth Information that we had the same Trust,BUT Roger Wirth told Dave Morris that was too much involved and he was not going to investigate our Trust. We have copy of Wirth's Report verifying this. The IRS went from Discovery about us right into Prosecution,circumventing all their normal 20 some various catagories they are supposed to go thru first. again No Due Process.

Vern C. Knopff

Mr. Karl Dahlstrom who made and sold the Trusts won the case in the 9th circuit court in San Fran Cisco,Calif. a Supreme court. the verdict was these Trusts were LEGAL Enties,and so was the Trust that we purchased from Dave Morrisin1977. The IRS would not investigate our Trust at all.We were told by Morris that we did NOT own anything and that we did not have to file taxes as the Trust owned all our Assets and were recorded in Helena Montana court House.

So, we were advised by our then attorney to sign a Plea Bargain Agreement in 1988.

Along in late 1982, we had a partner in our famous Jay Gould Minesand he wanted our 51% and offered to TRADE us gold and silver for our 51% so we eventually did trade. We have always had 300,000 tons of DUMP stockpiled gold-silver ORE,and so we had an Attorney make out all the papers on the LIKE KIND EXCHANGE,of the un-refined unprocessed gold -silver in the Dumps for gold and silver processed Buillion gold coins and silver bars. We paid Big 8 Andersen firm in Denver colo. who are CPA Experts, ($4000.00) to research and file us a Report that our Like-Kind Exchange did qualify for the Like Kind Exchange under IRS Code 1031,thereby we would not have any Taxes due until or unless we sold the Buillion for CASH-Money, as we NEVER cashed in according to IRS code laws.
The gold & silver content in the dumps were tested many times by many Mine co's. and always assayed at 1/8th ounce per ton,or 12/100ths ounce gold per ton and ONE ounce silver per ton. Total value was $10 to 14,Million dollars gross value.
We traded our 51% to our Partner for $3.56,Million Dollars, in gold & Silver.
We have a letter from Mr. Cahill of the U. S, Treasury Dept. saying that Gold Mapple Leaf gold coins and silver bars ARE NOT MONEY.The IRS said it was money and then in Dec. 8th, 1988 Robert J, Brooks the U. S. Assistant Attorney at Buttte, Montana when we were forced to pay the IRS $ONE Million Dollars,My attorney told Brooks that he would have to take the gold and silver Buillion as pay. Brooks blowed up and said oh NO that is NOT MONEY ,that I would have to sell it and give him the money???? First he said that it WAS money (which it is NOT), then he would not take it as pay and said that it was NOT money. All documented...
The IRS broke and violated our Plea Agreement 3 or 4 ways.NEVER any Justice. IRS ran over us like a Steam Roller on every single right of ours, total disregard of every right we had. Put me on probation for 3 years. I never had the slightest smell of a crime against me in all my life. We never did anything wrong at any time. So , we were forced again to sell all our Buillion we had for a great loss and pay the IRS ,as gold and silver had depreciated 40% from when we got it from our partner thru a coin dealer in Helena,Montana. The Coin Dealer we dealt with Wayne Miller Coins, (As our partner gave Miller two checks for the 3.56 Million and Miller was supposed to deliver the Buillion to us,but he took 2 yrs, to do so. Then our CPA, Mc Elroy and associates of Missoula, Montana found over $500,000.00 that Miller shorted us. OUR CPA Dick Schroedel,analyzed Wayne Miller's Affidavit that he gave to the IRS,and found the enormous theft and shortage to us and the IRS would NOT allow the shortage to our CPA's. This Dick Schroedel Cpa with Mc Elroy and associates of Missoula, Montana. was a former employee for the IRS,and had quit for IRS failing to keep their promise to Dick. So after Dick figured all our taxes. THEN the IRS persuaded Schroedel to go to work for them and still is. so IRS has denied us use of our own CPA, I think as done by IRS on purpose,so we could not use him even now, Also we had a BOB Steel a sharp CPA in Missoula do all our taxes and paid him several thousand dollars,when he was done then the IRS told us we have to fire Bob Steel as they would NOT accept his work then we lost all that money and had to get Dick Schroedel.Schroedel always told us NOT to tell him anything that we did not want to be told. ???

Vern C. Knapp

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Of course we know now that Schroedel would have told the IRS our Business. A real low down dirty unjust traitor.

The Main 2 culprits in our deal was the SPECIAL AGENT, Ronald B. Phillips of Eugene, Oregon, who plt the Swat Team on us a total surprise attack. and the other was and is the Assistant U. S. Attorney Robert J, Brooks of Butte, Mont. Brooks wrote up a 26 page Report dated and signed by him on Aug. 5th, 1987 that he gave to the District Judge Charles C, Lovell. The Report says that we lied and NEVER did have any Stockpiled or Dump Ore, hence we do NOT get any Like Kind Exchange, He said several times that Vern Knopf Lied and The Fact was that Vern Knopf never did have any 300,000 tons of stockpiled ore. Most outrageous LIES as we have always had the second class gold ore in these dumps ever sence 1887 and 1917. We have St. Joe minerals reports their Geologist assayed them in 1986; We have 1887 and 1917 Geologists Report saying their is thousands of tons of ore on these dumps; We have a Report by Anaconda Minerals co. dated June 9th, 1982 saying that their are 500,000 tons of dump ore and assaying .2 to.25 oz. gold per ton. and several major company's Reports all about the same. So Robert Brooks U.S. Attorney perjured his Report to deny us our Large tax credits we would have had on our Like Kind Exchange. An Absolute OBSTRUCTION OF JUSTIICE, and withholding all Exculpatory Evidence hidden from the District Judge. How can a U. S. - Assistant Attorney commit such lies and IN Justice against us citizens and get away with it ???Then later in Sept. 25th, 1987, I took two IRS Agents, (Ron Phillips and Kent Creebo; my two attorneys Mac Pherson, and Doug Kelly and Walt-Everly from Butte, Mont, took them all to our gould Mine and they got their own samples from the dumps and panned a whole string of free gold from their own samples and also walked on most of the dumps, they were shocked at all the gold they panned and Ron Phillips said to us that we had OVER 300,000 tons of dumps and he believed it. Brooks made his false report Aug 5th, 1987, These guys all went our Mines on Sept, 25th 1987, about 50 days later. So, Ron Phillips had 50 days to inform Robert Brooks that He and Creebo went to our Mines and panned gold and walked on the dumps. BUT no one ever corrected Brooks. If Brooks had not made such a False Report we would have never been prosecuted by Charles Lovell in the Districe Court and we would not have owed the IRS hardly any taxes as we would have had a legal LIKE KIND EXCHANGE, tax free. A horrible Injustice to my family of 34 years of Mining and spent our lives developing our gold Mines. Then to top it all off we were forced to take Bankruptcy in 1991 to save our ASSETS. as the IRS seized our legal Shekinah Corporation we established in 1989 to go on the Vancouver Stock market. Then theBankruptcy Trustees Wm. Kebe and Neil Jensen forced us into chapt. 7 without us having any Attorney of record, they would not wait til we found a Bankruptcy Attorney, as they were scarce. The IRS put us into Poverty for the past 4 years, and seized our home and our gold Mine and new ore Mill worth 2 million; all our heavy Equiptment and the Bankruptcy Trustee Wm. Kebe is trying to sell everything for $900,000.00 and Arco offered us $20-million for the Jay Gould Mine in June 1982. IRS claims we owe them more after they got ONE Million in 1988. Our lawyer then Bill Koontz said we did not owe them anymore. We have never had a court trial in tax court or a judgement from any court saying we owed any taxes, We are trying to raise some money for a tax attorney to contest the IRS proof of claim and have our taxes adjudicated thru the Bankruptcy court under IRS code 505. We have no way to borrow any money and so we are now on verge of losing everything we worked for during the past 34 years. One hell of a way to treat citizens.

Our whole story is on Tape.

Verne C. Knopf

The IRS has caused us to live on $ 303.00 Social Security, plus $160 SSI.- plus $153.00 per month for past 4 years. exist about $5600.00 per year. Food Stamps

We have a researched Lawyer's opinion, Mr. John Daly of Kennewick, Washington the following about the IRS: Quote:

The IRS violated our Due Process Rights:

No notice or administrative review of the Alleged Assessment was provided;

Further, the contract (Plea Bargain Agreement), required IRS to give Knopf a statutory notice which would permit Knopf to appeal the matter to the Tax court;

The IRS bypassed these rights by going directly to assessment and Seizure;

The IRS has violated both constitutional and contractural requirements;

Mr. John Daly further states that:

We believe court documents in the Bankruptcy and District courtfile should be sufficient to prove this case. (Un-quote).

Trouble is: We have no way to raise money to pay the lawyer to fight our case.

We would sure like to testify and tell our story before your Oversight commitee. The foregoing 4 pages of our story is only the tip of the iceberg. I am now 76, nearly 77 yrs. old and the IRS has completely destroyed our whole family by all their un-godly malicious, illegal ,unfounded, criminal attacks on my wife and I and my two grown sons.

We were already to go on the Vancouver B.C. Stock Market, with our legal corporation in April 1991,and have finances to run our ORE MILL and produce gold & silver,- when a Barbara Davis a NOVICE collection officer from Bozeman ,Montana SEIZED our Shekinah Gold Mine co. INC. illegally without a 6901 Transferee Notice to our Corp. or without a recorded Lein in Lewis & Clark county on our Corp. She claimed we hid our assets in the corp. which was an outright fraudulent lie. A corp. attorney made it all up, a MR. John Shontz. He told this Barbara Davis that she had to abide by Montana Law and that she had to have a recorded Lein before she could seize anything, in Lewis & Clark county, and that we did NOT hide our assets in the Corporation. All totally illegal. She Seized our Corp. anyway.. just when we were already to go into production withour ORE MILL with capacity of 80 tons of ore per day. IRS never had any proof of any kind that we even thought about hiding our assets, we never even thought about such a thing either...

So Mr. Dick Armey, maybe you can see why this out of control Malicious Swat teaming money wasting Bureau the IRS has to be replaced by a constitutional form of taxation like a Consumption Tax fairly administered to our U.S. citizens that produce the bulk of the Economy of this nation.

There are many others who have been illegally attacked by this IRS too. They Illegally TOOK OUR PROPERTIES WITHOUT JUST COMPENSATION, OR NO DUE PROCESS etc. so please create some new LAWS that no government Branch can (TAKE) our private properties from us citizens. STOP THIS unconstitutional GRAB or call it Extortion . Enforce our 4th Amendment constitutional GOD GIVEN RIGHTS... The IRS BUNCH has violated our 1st, 5th, 6th, 8th, 13th, constitutional-amendments RIGHTS, and all our Civil Rights with their fraudulent acts against us. For GOD'S AND US CITIZEN'S RIGHTS and America's future stop all this TYRANNY NOW... Tax wise we have still got $2 Million dollars of legal deductions that IRS never allowed us they added false Fraud charges on us too,& penalties on our ONE Misdemeanor count.

Sincerely,

Vern C. Knopf

Mr. ARMEY: WILL YOU PLEASE GIVE A COPY OF THIS 5 PAGE REPORT TO EACH MEMBER OF IRS OVERSIGHT COMMITTEE and those on the TAXPAYOR's BILL OF RIGHTS COMMITTEE. THANKS VERY MUCH.

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Dick Armey:

To sum it up briefly;

We never were Tax Protestors, in fact my wife was a Justice of the Peace in the town of Lincoln, Montana for 2½ years, being appointed by the county commissioners of Lewis & Clark county, Montana.

We always had reputable tax Cpa's figure our taxes and never had any disputes with the IRS. We always relied on Attorneys, and licensed ones to make out our papers.

We figure that the IRS Agent Ronald B. Phillips had an extreme EGO to go up the ladder to fame with the IRS, Fact is that he got a BIG CITATION from Washington D.C. for doing his great Illegal "jobby" on us, Our lawyer asked Phillips to tell him about it, but of course he would not.

Another Agent was Michael Schultz of Coos Bay Oregon who first jumped on us while we lived in Brookings, Ore. for 2 yrs., then he got promoted to Big office in Portland, Oregon.

While we lived in Brookings, Oregon, the IRS Agents along with Arrol Downs, local county police entered our posted Home at 01048 Winchuck road, thru locked gate and was in our home and unlocked and unblocked our garage doors and drove our vintage 1976 cadillac out and took pictures, that we now have, with words on the photo of: pictures by Arrol Downs. This all done without our knowledge and without any search warrant. Also when we returned from a trip we found many of our Trust Papers missing from our Files ~~in~~ in our Home...We figure that the IRS Agents took them, who else ?? This was in 1983.

A great crime on us was in 1985 after the Swat team on us near Elliston, Mont. was the IRS filed 6 criminal counts on us and filed it in the wrong Jurisdiction in Montana, when we lived in Brookings, Oregon, put us in wrong county jail, as we lived in Powell, county, they had to dismiss all 6 charges, as our lawyer got on the Judge Lovell, Dist. Judge. Was dismissed in Feb. 13th, 1986. IRS made my wife and I go thru this ordeal totally illegal. None of them ever even thought of apologizing to us, and we have suffered real slander and trauma on this and other ordeals. Too many to tell here.

When we paid the IRS in District court dec.8,1988 the ONE Million dollars in money and properties, then the next day Dec, 9th, 1988, the IRS placed a fraud penalty on us of $412,142,10. and started adding interest on it.???We do not know to this day, Feb. 28th, 1995, where we stand as the IRS figured our taxes and all we know is that the IRS has way too much power to charge penalties, compound interest, and fraud charges at their own volition and it all has to be changed. We have newspapers from several states how the IRS wrote articles about us and told that we could spend 15 years in jail and pay big fines etc. BEFORE we ever had a trial, or ever our taxes were figured, in 1985, We were told that we were innocent til proven guilty in a court of law. The IRS figured because we spent 34 years of our lives mining we were rich and it was said anyway that they were going to make an example out of us. We worked for 34 years for NOTHING????? They would have killed us by the swat team just like WACO, IF my wife had not radioed our sheriff and he came & stopped them. They had an ambulance and fire truck standing by. In the eyes of Justice, we should have a presidential Pardon. and the government should pay us restitution and give us our gold Mines and Home back to us. 10 long years of this Tyranny is too much for us citizens.

We would like to have a full CONGRESSIONAL INVESTIGATION OF OUR ORDEAL.....

Dana C. Kropp

Gold miner forfeits $1.7 million to IRS

'Staunch American' pays record cash income tax settlement

By Bill Wilke
Standard State Bureau

HELENA — A 70-year-old Elliston-area gold miner handed over $490,000 in cash and a $500,000 piece of property to federal court Thursday as part of a plea agreement struck with federal officials over income tax violations.

Vern Knopf, who said he had spent some 30 years living in "a log cabin worse than Abe Lincoln had," also signed over to the government some $770,000 out of the recent $3.5 million sale of a mine near Stemple Pass.

Internal Revenue Service officials say the agreement amounts to the largest cash federal income tax settlement in the state's history.

Knopf, described by his lawyer as the victim of a "trust peddler," was arrested at his home in a wooded area near Elliston last April.

The arrest came after a 90-minute wait by federal marshals, who feared Knopf might have had automatic weapons in the house, according to news accounts at the time.

Knopf was charged with failing to file tax returns on $3.7 million earned between 1980 and 1982. IRS officials estimated he owed some $714,000 in taxes on the income.

In testimony Thursday, Knopf described himself as a "staunch American" who was misled by a now-deceased Washington investment counselor.

Knopf said he was told by the counselor in 1977 that he would not have to file income tax returns if he signed all his assets over to an offshore charitable trust.

"I didn't know anything about them," Knopf said. "I'm a gold miner."

Knopf said he struggled financially much of his life as a small miner and sought out the investment counselor when he realized he had accumulated considerable of wealth. He said he wanted to see the money "do some good" through the charitable trust.

"I'm sorry if I caused any offense to the government," he said, "because I'm a staunch American."

U.S. Attorney Pete Dunbar in Billings said in a telephone interview after the sentencing that, in his experience, a defendant "pleads guilty to a criminal violation only because they are in fact guilty.

"I hope it illustrates we will jump on people with a lot of money as well as those without quite so much."

Knopf was initially charged with felony tax evasion, but the charge was reduced to misdemeanor failure to file an income tax return as part of the plea bargain. Charges against Knopf's wife, Lorene, were dropped as part of the agreement.

Knopf paid off the delinquent taxes and penalties with a $430,000 certified check raised through the sale of gold and silver bullion, a deed on an estimated $500,000 piece of Oregon property, $60,000 from a down payment on the sale of a mine near Stemple Pass, and the assignment of another $770,000 he will receive later from the mine sale.

Knopf said he recently sold the mine to a group of investors for $3.5 million.

He also was sentenced by U.S. District Judge Charles Lovell to three years of probation for the tax violation.

Knopf's attorney, Douglas Kelley of Helena, said the financial arrangements with the IRS were completed only minutes before Thursday's sentencing.

"We really had to scramble," Knopf told the court.

Kelley said after the sentencing that his client was not left destitute by the settlement, but had felt distressed over treatment he received from the IRS.

Montana

Vo-tech dental plans head regents' agenda

Commissioner says U-System lacks money to fund hygiene programs

By Bob Anez
Associated Press Writer

HELENA — The Board of Regents will be asked next week to delay any decision on three competing proposals to create dental hygiene programs at vocational-technical centers because of the high cost of such courses, said Carrol Krause, commissioner of higher gram is $150,000 to $200,000 and that much money is not available in the Montana University System.

The state has purchased two of the facilities — Helena and Missoula — and is assuming responsibility for paying off bonds that financed construction of the other three, Krause said. The regents may consider refinancing the bonds if that would save money, he added.

Also on the regents' agenda is a report on the growing nursing shortage in Montana and the nation. The university system has trimmed its nursing programs, reducing the Montana State University courses because of dwindling funds and enrollment.

the state will need in the future and the regents will be looking for ways to increase enrollment in such programs. The solution certainly will require more money because nursing courses require a large number of faculty, he said.

"It would be very difficult for any of our institutions to divert that kind of money to offer a program," said Krause, whose office will recommend the regents defer action at their meeting here next Thursday and Friday.

In addition to the expense, dental hygiene has been losing popularity among students and that's an added concern for the school that would eventually start such a program. he workers if another institution doesn't offer a program.

Plans were submitted by the vo-tech centers in Butte, Great Falls and Helena; the Butte proposal was in conjunction with Montana Tech. The regents are involved because the 1987 Legislature voted to turn over control of the state's five vo-techs to the board.

In a related matter, the regents will review a progress report on the transition of vo-tech control from local school districts to the board.

Krause said a major issue to be decided will be how closely the vo-tech centers in Billings, Butte and Missoula will be affiliated with the colleges in those cities. Close ties

Butte's Freebourn urges decision this year

Butte Vo-Tech and Montana Tech officials will attend the state's Board of Regents meeting next week in Helena to present their proposals for a new dental hygiene program at the Vo-Tech.

The delegation's proposal will be made even though Montana's commissioner for higher education says he will ask the regents to delay a decision on the matter.

Commissioner Carrol Krause says the regents' priorities should be funding existing programs rather than new programs, especially since funding existing programs already is a problem.

For example, regents will discuss at the meeting the state's nursing shortage and how the University System can remedy the problem. Nursing programs have been cut, and Krause says the system will produce only half the nurses needed in the state in the future.

Despite Krause's plans, Butte Vo-Tech Director Harry Freebourn

Elliston couple arrested for tax evasion

By MICHAEL CRATER
IR Staff Writer

They allegedly owe $714,239

Posing as hunters didn't help four deputy U.S. Marshals Wednesday as they tried to arrest an Elliston couple accused of evading taxes on more than $3.6 million in income.

After their first effort failed to get them within reach of the couple, the marshals regrouped with three more colleagues and five IRS officers in the woods. Their targets called a Powell County sheriff's deputy, complaining of trespassers, and the deputy aided in the arrest.

Vern Clinton Knopf, 67, and Lorene M. Knopf, 47, were charged with evading taxes in 1980, 1981 and 1982 when they lived in Brookings, Ore. They were jailed in Helena in lieu of $50,000 bail apiece.

The Knopfs were indicted by a federal grand jury in Billings Tuesday. The indictment charges them with failing to file income-tax returns on incomes of $318,049 in 1980, $217,188 in 1981 and $3,141,004 in 1982. The indictment charged that they owed $714,239 in federal income taxes for those three years.

The marshals first approached the Knopfs' home six miles from Elliston posing as hunters seeking permission to hunt on their land. "You just don't go up and start banging on doors" in such cases, U.S. Marshal Ron Alles of Billings said. There was a report that the couple might have auto-

(More on COUPLE, back page)

Couple

Continued from Page 1A

matic weapons, he said.

But the ruse failed. The couple merely shouted from inside the house for the "hunters" to leave. Instead, they went into the woods nearby, then Alles and a deputy in a vehicle used a loudspeaker to identify themselves.

During the next hour, the couple could be seen inside the house, Alles said, and he considered the possibility of using tear gas. That would have required calling in an ambulance and fire truck because of the hazards of the gas, he said. Before any decision was reached, the couple called the sheriff's office. A deputy arrived and identified the marshals to the couple, who then gave themselves up to be arrested.

If convicted, they could each face up to 15 years in prison and fines of up to $120,000, plus civil action by the IRS for the unpaid taxes, penalties and interest. The two will be arraigned soon before U.S. District Judge Charles Lovell of Helena.

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Locally owned & operated.
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458-5732

INDEPENDENT RECORD

FRIDAY AFTERNOON

November 1, 1985
Helena, Montana
Vol. 41 No.345
Single copy 35c.

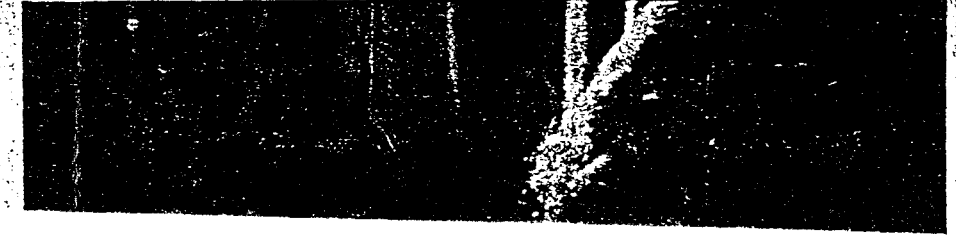
...in crosstown grid clash
Page 5B

Help is available

People don't have to feel there is no one to talk with

(Sixth in a six-part series.)

By KAREN E. DAVIS

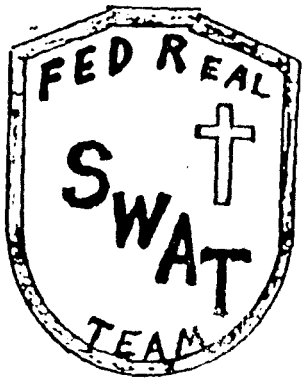


Pact proposes deep arms cuts

GENEVA, Switzerland (AP) — U.S. arms negotiators today presented a new arms control proposal to the Soviets that President Reagan said calls for deep cuts in superpower offensive nuclear arsenals.

The U.S. and Soviet sides met for two hours in plenary session, and neither released details of

Reagan made the request for a week-long extension public on Thursday, when he announced basic outlines of the new U.S. arms control proposal. The president said the plan, a counterproposal to one offered earlier by Soviet leader Mikhail S. Gorbachev, also calls for "no cheating" or arms accords and would



JESUS IS LORD OF ALL !

Eph. 6 : 17

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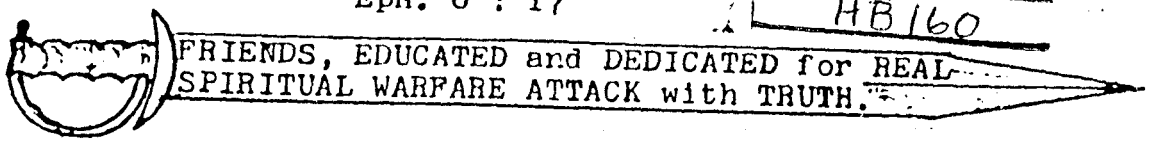

"BE SOBER BE VIGILANT" 2 Pet. 5 : 8

★ ★ ★ ★ ★ ★ ★ ★ ★ ★
★ What you don't ★
★ know CAN hurt you! ★
★ ★ ★ ★ ★ ★ ★ ★ ★ ★

REPORT ON LOST "HUNTERS" TRIGGERS STATEWIDE ALERT INVOLVING THE

VIGILANTES OF MONTANA

The story of the "lost hunters" involved in a Federal "SWAT" instigated upon an elderly Elliston couple at their peaceful mountain home, has triggered an ALERT to the MONTANA VIGILANTES and other concerned citizens. This Statewide ALERT is designed to draw attention of the un-informed public, to the dangerous activity that is taking place under the ruse of "Law enforcement", not just in Montana but nationwide. On October 30, 1985 an unbelievable event occurred like a "Haloween Nightmare" as impersonators dressed as hunters and, armed, camouflaged agents trespassed upon posted private property with the aid of seven U.S. Marshals unadvised by the local sheriff, threatening to use tear gas if the couple did not remove themselves from their home. Such "terrorist activity" is indeed unbecoming to American lifestyle and established Constitutional protections.

It is expected that the ALERT will instigate an investigation through the office of the U.S. Attorney General and the United States Justice Dept. Reports, for those interested, will be available from: THE VIGILANTE REPORT, Box 1544, Billings, Montana 59103

Is FREEDOM for You?

→ Remember this truth, a government that will steal your freedoms today will <u>not</u> stop at taking your life tomorrow or as soon as they have an iron grip on the people. It's <u>fight or die</u> and you really have <u>no choice</u> if you value life or freedom.

'Halloween nighmare'

Having read the article in the Independent Record dated Oct. 31 concerning the Elliston couple who were arrested and allegedly charged with owing $714,239, it was interesting and favorable that your report indicated that "the ruse failed."

The unbelievable event of being attacked by hunters and camouflaged, armed, "trick-or-treaters" sounds like something formerly restricted to comic book publications.

Realizing that seven of the U.S. Marshals located in Montana took part in the reported "attack" makes it appear that a new type of "control" is being imposed upon innocent individuals. A "control" of this design would violate all intents of the U.S. Constitution.

The request given for "stand-by" fire trucks for the event and suggested intent to use tear gas without advisement from the sheriff, indicates that an "alien" has invaded with full intent of usurping all local authority.

It might be well to note that the procedures used to obtain the "indictment" were handled in a deceptive and fraudulent manner with further falsification used in determining a monetary liability. The recent Supreme Court decision determining commodity valuations would void the already fraudulent indictment.

This is one case that should be turned over to the United States Attorney General for investigation and proper correction.

Fortunately the victims were able to summon several witnesses to the scene of a "Halloween Nightmare."

Jack Nason
4630 N. Montana

HB160

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 6
DATE 3/17/95
BILL NO. HB160

TESTIMONY IN OPPOSITION TO HOUSE BILL 160
MARCH 17, 1995

SHERRY SCHEEL MATTEUCCI
UNITED STATES ATTORNEY
FOR THE DISTRICT OF MONTANA

House Bill 160 attempts to address a phantom problem. The sponsors have apparently concluded that there is insufficient communication between and among federal, state and local law enforcement professionals. While communication, being imperfect, can always be improved, Montana is fortunate to enjoy strong partnership relationships among those persons at every level of government who devote their lives to public safety. In our cities, towns, tribal communities and rural areas, effective law enforcement depends on these partnerships. This bill, if adopted, would do nothing to strengthen relationships; it would instead foster an atmosphere of exclusion, distrust and disharmony, none of which serve the interests of Montana's citizens. No piece of legislation can require people to work well together but poorly considered legislation such as this can create difficulties where none existed.

In a closely connected and sparsely populated state like Montana, it is appropriate, in most situations, for federal law enforcement officers to let a local sheriff know when they will be carrying out their duties in the sheriff's county. The judgment, however, of when it is and when it is not appropriate must rest with law enforcement...it cannot be mandated.

What really happens most of the time is that a federal law enforcement officer needs and wants the assistance of the sheriff in order to carry out his or her responsibilities more effectively. Conversely, many times when a federal agent is in a county it is at the request of

the sheriff and the agent is providing professional assistance, either on a matter of mutual interest or one in which such assistance is thought to be valuable by the sheriff.

The partnership of state, local and federal law enforcement extends far beyond the relatively simple and straightforward issue of physical communication. There are a number of formal organizations voluntarily established to facilitate mutual support at every level. There are eight area drug enforcement task forces, each made up of at least five counties' law enforcement professionals plus federal and state representatives. All of these task forces are funded primarily with federal monies administered by the Board of Crime Control. In 1995 the Board will administer more than $2.25 million provided by the United States Department of Justice. In addition to the anti-drug task forces, tribal, local, state and federal law enforcement officers work together on task forces to address border issues, crime on Indian Reservations, environmental crimes, violent crime, health care fraud, violence against abortion-services providers and their patients, and actions of anti-government activists. There are also mutually supported task forces to address children's justice issues, violence against children, and compensation for victims of crime.

An extremely significant federal, state and local partnership effort involves community policing. Many towns, Indian Reservations, cities and counties, and the State of Montana itself, have benefited from federal efforts to enhance local law enforcement. The Violent Crime Control and Law Enforcement Act of 1994 has permitted the United States Department of Justice and my office to distribute over $4.5 million to fund hiring of sixty-five law enforcement officers in twenty-one towns, nineteen counties, six Reservations and the State Highway Patrol.

EXHIBIT 6
DATE 3-17-95
HB 160

perpetrators. In 1994 $500,000 was given to local law enforcement to assist in their drug prevention efforts. In 1995 to date, nearly $120,000 has already been distributed.

All of these facts and factors demonstrate that there is no problem with mutual respect, cooperative effort, and professional support between federal and local law enforcement professionals. Each has an important contribution to make and none could be as effective without the other's strength. Please do not create controversy where none exists. I request your vote in opposition to House Bill 160. Thank you for your consideration.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 7
DATE 3/17/95
BILL NO. HB160

Spence, Moriarity & Schuster

ATTORNEYS AT LAW

GERRY L. SPENCE
EDWARD P. MORIARITY
ROBERT P. SCHUSTER
GARY L. SHOCKEY
J. DOUGLAS MCCALLA
ROY A. JACOBSON, JR.

GLEN G. DEBRODER
KENT W. SPENCE
ROBERT A. KRAUSE
HEATHER NOBLE
ROBERT R. ROSE, JR.
ROBERT R. ROSE, III

November 9, 1992

Walter Hammermeister
P. O. Box 1153
Conrad, Montana 59425

Dear Mr. Hammermeister:

Thank you for your letter. I especially appreciated your letter to Sheriff Bruce Whittaker. You make good sense, my friend. Too bad the country is not populated with sheriffs like you.

My respect,

G. L. Spence
Of SPENCE, MORIARITY & SCHUSTER

GLS/lm

15 SOUTH JACKSON STREET • P.O. BOX 548 • JACKSON, WYOMING 83001 • 307-733-7290
2424 PIONEER AVENUE, SUITE 302 • P.O. BOX 1006 • CHEYENNE, WYOMING 82003 • 307-635-1533

September 15, 1992

Sheriff Bruce Whittaker
Boundry County Sheriffs Office
Bonners Ferry, ID 83805

Dear Sir:

I support your efforts to investigate the confrontation between U.S. Marshals with other Federal law enforcement agents and Randy Weaver and his family and Kevin Harris.

All I know of the situation is what I've read in the newspaper. I suspect the Federal Officers exceeded their authority and certainly did not use good discretion in their actions. When a person has been isolated and neutralized for a year and a half, that is probably more time than he would serve in jail for selling 2 sawed off shot guns, if he was convicted.

In the United States of America a person is still supposed to be innocent until proven guilty. This minor charge certainly is no reason to shoot a 14 year old boy in the back, while he is running away, nor to shoot a woman through a window while she is in her own home, holding open a door for her family so they can get in the house. I suspect the Federal Officers was trespassing on private property and doing it at night. I have worked with Federal law enforcement officers long enough, it will be very hard for me to even believe the 2 shots that killed the boy and mother could ever have been an accident.

I strongly believe if this investigation is strong enough to crack the resistance you will run into, there will be and certainly should be some deliberate Homicide charges filed and I hope you also can charge what ever superiors that suggested that type of surveillance as he knew or should have know that type of confrontation would have resulted from the Federal Officer's action, and that confrontation reaction would have happened in a much larger area than just Idaho.

I really don't like writing such a letter, I am receiving good retirement pay as a sheriff. I have been sued many times but never once did a case against me or my department ever get to trial. I can match situation and my experience with just about anyone or department, my deputies have been shot and shot at including situations by mentally demented and highly drugged

EXHIBIT 7
DATE 3-17-95
HB 160

individuals. Each case was quickly defused with me usually being the one taking the person into physical custody, yet you will have a hard time finding anyone that has ever seen me with a firearm visible on me, while I was on the job. I can shoot, I believe Dick Cade can vouch that I am a member of the FBI-NA possible club. I have been well trained how to aggravate an irate person to slightly assault you so you can arrest them, even the way an officer walks up to a truck can get a person on the fight, conversely proper action can neutralize a situation without any violence.

At the very least, Section 1983 Civil Rights as been used to bring and keep local and State officials down to earth. The Bevins decision can do the same thing to Federal Officials.

Good investigation and good luck.

Sincerely,

Walter Hammermeister

cc: Honorable Governor Cecil Andrus
Attorney General of Idaho
County Attorney Boundry County
Gerry Spence

Federal law would weaken Fourth Amendment

3/8/95

By Steve Gorton of The Montanian

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and their persons or things to be seized."
—Fourth Amendment to the U.S. Constitution

A provision in the proposed U.S. 1995 crime bill would allow evidence seized without a proper search warrant to be used in court against the defendant. But an amendment to the bill would exclude the Bureau of Alcohol, Tobacco and Firearms (ATF) from the looser standards.

The ominously-titled H.R. 666, known as the exclusionary rule exemption, passed the Republican-controlled U.S. House of Representatives on Feb. 8. The lawmakers passed the bill in an attempt to decrease the number of criminal suspects who have been acquitted because evidence against them was seized with an illegal search warrant.

H.R. 666 would allow federal judges to accept evidence taken in illegal searches as long as law enforcement authorities had good reason to think the search was lawful. Under the current legal doctrine known as the *exclusionary rule*, evidence gathered in illegal searches generally cannot be used in court. The bill would codify a 1984 U.S. Supreme Court ruling in *United States vs. Leon* allowing a "good faith" exception to the exclusionary rule when a search warrant was later found to be illegal. The bill would also legalize some searches that were conducted without a warrant.

Republican lawmakers said society is unfairly punished when criminals escape on legal technicalities because of a police mistake.

Some Democratic lawmakers fought the bill, saying it would remove the incentive for police officers to obtain legal search warrants and thus undermine the Fourth Amendment prohibition against unreasonable search and seizure.

The bill passed 289-142. Rep. Pat Williams, D-Mont., voted against the bill.

The following day, Feb. 9, Rep. Harold Volkmer, D-Mo. — a gun-rights advocate — succeeded in attaching an amendment that would exempt ATF from the exclusion. Volkmer said the ATF has been over-zealous in searching for illegal guns. Volkmer's amendment passed 228-198. Williams voted for the amendment.

The bill awaits Senate approval.

A spokesman for U.S. Sen. Conrad Burns, R-Mont., believes the bill has a good chance of passing in the Senate.

"Criminals have been let off the hook on a technicality too many times," Burns press secretary Dick Wadhams said Feb. 22. "Conrad does have some concerns about this, but at the same time he doesn't want to see criminals get off scot-free ... this bill is not designed to allow any law enforcement officer to go into people's homes without a search warrant. And Conrad also does share strong concerns about how ATF behaved in Waco [Texas]. He supports that ATF exemption."

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 8
DATE 3/17/95
BILL NO. HB 769

HB 160

JAMES V. HANSEN
1ST DISTRICT UTAH

COMMITTEES
ARMED SERVICES
NATURAL RESOURCES
SELECT COMMITTEE ON INTELLIGENCE

WASHINGTON OFFICE
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RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-4401
(202) 225-0453

Congress of the United States
House of Representatives
Washington, DC 20515-4401

DISTRICT OFFICES
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OGDEN, UT 84401
(801) 393-8362
(801) 625-5677
(801) 451-5822

405 EAST TABERNACLE
SUITE 301
ST GEORGE, UT 84770
(801) 628-1071

SENATE JUDICIARY
EXHIBIT NO. 9
DATE 3/17/95
BILL NO. HB160

FEB. 23, 1995

The Honorable Janet Reno
Attorney General of the United States
Main Justice Building
10th and Constitution Ave., Room 5111
Washington, D.C. 20530

Dear Ms. Reno:

As the Member of Congress representing the First Congressional District of Utah, I have been approached by literally dozens of constituents who are deeply concerned regarding statements attributed to you during a "60 Minutes" broadcast regarding Second Amendment rights to keep and bear arms. My purpose in writing is to request a written clarification from you on your statements, as well as to obtain a statement of Department of Justice policy on such matters.

First, it has been alleged by some of my constituents that you made the following statements during the 60 Minutes interview in response to a question on what your definition of a "cultist" would be. You allegedly responded:

> "A cultist is one who has a strong belief in the Bible and the Second Coming of Christ; who frequently attends Bible studies; who has a high level of financial giving to a Christian cause; who home schools for their children; who has accumulated survival foods and has a strong belief in the Second Amendment; and who distrusts big government. Any of these may qualify (a person as a cultist) but certainly more than one would cause us to strongly look at this person as a threat, and his family as being in a risk situation that qualified for government interference. Waco was one of those situations that qualified under our definition of people being at risk that necessitates government action to save them."

I would appreciate specific answers to the following questions.

(1) Did you, in fact, make such a statement and does that accurately reflect your views as the Attorney General of the United States?

(2) If so, how has this manifested itself into official Departmental guidelines or policy? Most specifically, is there a policy or ongoing operation targeting individuals for federal scrutiny based solely on their fitting one or more of the above-mentioned criteria?

Second, my constituents have been contacting me of late to inform me that the Department of Justice, in conjunction with law enforcement agents from the Bureau of Alcohol, Tobacco and Firearms (BATF), are planning nation-wide raids on the private homes of individuals primarily in the Western United States in the coming weeks because of suspected violations of federal gun laws.

During my fourteen years in Congress, I have heard many rumors and government "conspiracy theories." While I usually take them with a "grain of salt," I must confess that this specific allegation appears to be gaining in frequency and consistency. Some individuals for whom I have great respect and a long association have come forward recently to give me this information. In fact, one such individual, whom I consider to be very reliable and credible, told me that he personally counted 35 agents from the BATF together in Moab, Utah, recently, and that each agent was equipped with a sidearm.

(3) Is the Department of Justice currently planning to work with the BATF, the FBI, or any other federal law enforcement agency, to engage in special raids on the private homes of U.S. citizens because of suspected federal arms violations?

(4) Does the Department of Justice have knowledge of the BATF's recent appearance in Moab, Utah, and if so, what were the reasons for 35 armed BATF agents to congregate in such a small town in my State of Utah?

Please provide me a written response to the above questions as soon as possible. The information you provide will be most helpful in assisting me as I consider what appropriate actions or responses I may undertake in the Congress.

Sincerely yours,

James V. Hansen
Member of Congress

JVH:sp
cc: Stephen E. Higgins

DATE 3/17/95

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: HB160 HB 332
HB 323

< ■ > PLEASE PRINT < ■ >

Name	Representing	Bill No.	Check One: Support	Oppose
ROBERT F. KAMENA	SELF	160	✓	
John Connor	Attorney General's Office	160		X
SHERRI MATTEUCCI	U.S. ATTORNEY	160		X
Stoney Burk	SELF	160	✓	
TIM SHANKS	MT Police Protective Assn	160		X
A. Phil (Bud) Elwell	WCSM/NWAC	323/160	✓	-
Chuck O'Reilly	Sheriff	160		X
Brad Martin	MT Dem Party	160		X
Clint Frooke	NWSA	160	✓	
G. W. REIHART	SELF	160	✓	
Ray Hoaken	Self	160	✓	
Lorna Frank	MT. Farm Bureau	160	✓	
David Hemion	MT Assoc. of Churches	160		✓
Christine Kaufmann	Mt. human rights network	160		✓

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE _____

SENATE COMMITTEE ON _____

BILLS BEING HEARD TODAY: _____

_____

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
Chris Mehus	MSGA HB	160	✓	
GARY MARBUT	MSSA GOA CCRBA WMFGA BSASC	160	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 3/17/95

SENATE COMMITTEE ON _____

BILLS BEING HEARD TODAY: _____

_____

< ■ > PLEASE PRINT < ■ >

Name	Representing	Bill No.	Check One: Support	Check One: Oppose
Walt Sayles	self	HB 160	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

REGISTER.F10

MINUTES

MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **ACTING CHAIRMAN AL BISHOP**, on March 20, 1995, at 8:00 A.M.

ROLL CALL

Members Present:

Sen. Bruce D. Crippen, Chairman (R)
Sen. Al Bishop, Vice Chairman (R)
Sen. Larry L. Baer (R)
Sen. Sharon Estrada (R)
Sen. Lorents Grosfield (R)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Mike Halligan (D)
Sen. Linda J. Nelson (D)

Members Excused: None.

Members Absent: None.

Staff Present: Valencia Lane, Legislative Council
Judy Feland, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing:	HB 444, HB 491, HB 340, HJR 27
Executive Action:	HB 444, HB 340, HB 323, HB 547, HB 332, HB 160, HB 160 (Minority Report) HB 491 - discussion

{Tape: 1; Side: A; Approx. Counter: 00}

HEARING ON HB 491

Opening Statement by Sponsor:

REPRESENTATIVE MATT BRAINARD, House District 42, Missoula, sponsored HB 491, which he said was a short and simple bill. He said it was presented in the House Judiciary Committee without either proponents or opponents. The bill would clarify that the sheriff is the chief law enforcement officer of the county. Under some federal laws proposed, they refer to the, "chief law enforcement officer." This is complicated by the fact that there

are a variety of city/county governments. He said it was a matter of common sense and a little clarification of the law. There was some concern that the language in the bill would cause some conflict between city and county personnel, particularly in a merger. That is not what they were trying to do, he said. He thought the law enforcement would all be one in that situation, and the bill would apply to the overall structure.

Proponents' Testimony:

None.

Opponents' Testimony:

W. James Kembel, representing the City of Billings, apologized to the sponsor for their late objections. The City of Billings had some concern that it would cause problems between the city and county law enforcement personnel, especially in a merger situation if the city person was designated as the law enforcement person for that county. He was willing to work with **REPRESENTATIVE BRAINARD** and the staff on the bill.

Jerry Williams represented the Montana Police Protective Association. He said his organization opposed HB 491 because of potential problems. The intent of the legislation was unclear, setting the stage for local jurisdictional battles between sheriff and police departments as well as other law enforcement agencies. They saw no need for the legislation. They had no problems.

Questions From Committee Members and Responses:

SENATOR REINY JABS asked **Mr. Williams** how it worked at present, if there was a "boss" of the county. **Mr. Williams** said in the counties, the sheriff was the chief law enforcement officer. In the cities, the chief of police was the chief law enforcement officer. Their concern was that in a city/county situation, if a problem should occur, the sheriff might use this description in legislation to take charge of any or all investigations, telling the chief of police what to do. It would set up a jurisdictional battle which would only hamper investigations. **SENATOR LINDA NELSON** asked the sponsor if he had a personal reason for bringing this bill, or had seen a particular problem in his county. **REPRESENTATIVE BRAINARD** said in one situation in Ravalli County, regarding the Brady bill. In Ravalli County, the county sheriff is dealing with the Brady bill. However, in adjoining Missoula County, the county attorney has declared himself to be the chief law enforcement officer of the county. In all reality, he is the prosecutor and not really a law enforcement officer. He said they tried to get the language set up so that it coincides with the responsibilities that are normally ascribed to the county sheriff in regard to normal structure of government. He had assumed that the county is the area the sheriff normally serves outside of a municipalities' boundaries. **SENATOR NELSON** asked if

there was nothing in the law to address this problem. She asked if they had tried to solve it locally? The sponsor said the bill would be a clarifier. In the House, they had several bills that came in regarding federal appropriations to education. They required that they pass a bill in the House with similar or exact language to existing federal code. The federal government had chosen the term, "chief law enforcement officer." He said he would be willing to accept a friendly amendment from the cities. **SENATOR LARRY BAER** asked **REPRESENTATIVE BRAINARD** about the apprehension on the part of the cities and wanted to know if he would modify the bill to say the sheriff was the chief law enforcement officer of the county, and the chief of police was the chief law enforcement officer of the city in their respective capacities. The sponsor agreed, saying there might be corresponding language to address the duties of the chief of police. **SENATOR SHARON ESTRADA** asked **Mr. Kembel** his opinion on the suggestion for an amendment. **Mr. Kembel** said he would be glad to run it by his employers to see if it would satisfy their concerns. He said one possibility would be to limit the scope to the county attorney and sheriff's offices. **CHAIRMAN AL BISHOP** asked the principals to work together and get back to the committee as soon as possible. **SENATOR STEVE DOHERTY** asked how this bill would work in the Butte/Silverbow form of unified government. **Mr. Williams** said they were a unified government. At present, they had an elected sheriff with a police department serving the entire county. In Anaconda, they had elected police chief with a police department, and they have no sheriff. He did not know what the effect of the bill would be on those systems. **SENATOR JABS** asked about Line 12, the duties prescribed by law. **REPRESENTATIVE BRAINARD** said the list of duties were existing law. He said it did not have much to do with his bill except they may be some of the duties to come down from the federal government.

Closing by Sponsor:

REPRESENTATIVE BRAINARD said **Mr. Williams** hit on a pertinent subject. Under the normal system where the sheriff as part of the regular county government and there is a municipality, or even more than one municipality, the sheriff is the one elected law enforcement officer in the county now. Consequently, he receives a lot of public respect and confidence. In the case where there were overlapping jurisdictions, he thought they could work out an amendment to take care of the concerns.

HEARING ON HB 340

Opening Statement by Sponsor:

REPRESENTATIVE THOMAS E. NELSON, House District 11, Billings Heights, introduced HB 340, which he preferred to call the, "Kandas" bill. Some bills pick up the name of the sponsor, but he preferred it to refer to the Kandas family, for whom the bill was brought. The bill was introduced to solve a specific problem

and to close a loophole in the law. He read and presented a letter **(EXHIBIT 1) from Billings attorneys, Peterson and Schofield,** outlining the problem and proposed adoption. The bill had been amended, the sponsor said, on Page 1, Line 18, 19 and 20. The reason it was done is to show that sexual assault on **ANY** child, not just family members, would affect the adoption requirements.

Proponents' Testimony:

Sandy Kandas, Billings, represented her husband, Mike and herself. She said her ex-husband, John McPherson, is currently serving a 20-year term in the State Prison for sexual assault. He was convicted of four counts of sexual assault, two on her own children, and two on neighbor children. They had been married for 2 1/2 years when the abuse occurred. She explained two of her three children were adopted by John McPherson because her first husband did not want them, giving them up. Mr. McPherson agreed to adopt them. Then he began molesting the two daughters, who were ages 5 and 6 at the time. About six months later she learned of the abuse from the neighbor, whose two daughters were also involved. After he went to prison, they divorced. She worked to support the children without outside aid. Mr. McPherson sent $25 a month in child support. Almost four years ago she had married John Kandas and no longer had to work, staying home with the children. She said he had provided financial support as well as attending activities of the children. She said the children were teens now, 15, 14 and 12. She reported that Mr. Kandas had been attempting to adopt them for two years, but the ex-husband refused consent. The children had no desire to see him. She was angry about the loophole in the law that allowed a person like Mr. McPherson to retain parental rights. He had filed a brief with the courts to sue for visitation rights after the prison sentence. Since there was no abuse to the son, who was three at the time of the other abuse, the parental rights should not be terminated for that child. She said the son was forced to be a spectator of the abuse, however. The children did not wish to see him. **Mrs. Kandas** said one of the girls had received a letter from Mr. McPherson which was sexually objectionable. Their hands were tied because a pedophile refused to relinquish parental rights, she said. She related that Mr. McPherson had even been able to write to the schools about the children, who also had to legally release information. She was concerned about him walking into the school, demanding the children's release into his custody. As a biological mother, she felt his rights were superseding hers. She was also worried about the custody of the children in the event of her death. She presented a letter from **Sandy Burns, M.A., M.C., Billings, Psychotherapist,** who specializes in sexual abuse cases. **(EXHIBIT 2).** She had treated her daughters. **Ms. Kandas** said the law needed to be changed. She urged their favorable recommendation.

Sharon Bakerson, representing the Majority Against Child Molestation (MACeM), said their members included victims, parents and guardians of victims and interested citizens who thanked the sponsor for introducing this legislation. She said many victims who, starting to heal, and establishing a healthy relationship with a step-parent, have faced major stumbling blocks in their healing. This bill would allow the innocent victims a chance for a normal family life. It would help them close the door on many fears, and help them become whole again. He urged a Do Pass.

Hank Hudson, Director, Department of Family Services, said they were aware of this issue with this family. They had looked into remedies and came to same conclusion that a change in the law would be required. They supported the bill. They viewed it as a way to reduce the amount of trauma that children are subjected to in these situations and also a way to allow people to move on in difficult situations and get on with their lives with some sense of insurance and permanence.

Mary Alice Cook, represented the Advocates for Montana's Children. She said her organization supported HB 340.

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

SENATOR SUE BARTLETT asked to have an amendment passed out which she had shared with the sponsor and asked him to have the Kandas' review. **(EXHIBIT 3).** She said she was not interested in upsetting the progress of the bill as it was written through the process. She asked the sponsor his opinion of the amendment, which she said included the potential for judges to terminate parental rights when the biological father of the child is convicted of sexual intercourse without consent and the child is the result of that crime. **REPRESENTATIVE NELSON** said they consider it a friendly amendment. **SENATOR BARTLETT** questioned the immediate effective date in regard to **Ms. Kandas'** ex-husband being released from prison in the next year. The sponsor said he would certainly think it was appropriate to add an immediate effective date as **SENATOR BARTLETT** had suggested. He said perhaps they could get on with their lives, re-institute adoption proceedings, and get the attorney fees behind them. **SENATOR NELSON** asked about the change from a capital A. to a small a. **REPRESENTATIVE NELSON** asked **Mr. Hudson** to explain. He said the amendments were not at the request of the department, but he understood that the House committee wanted to extend this not only to sexual assault. They wanted to say that anyone who commits a crime against any children loses the right to consent to the adoption of a child. The sponsor explained it was also put into the bill so that the son could be adopted as well, even though he was not involved in the molestation. **SENATOR DOHERTY** asked if they had instituted proceedings to terminate Mr. McPherson's parental rights? **Ms.**

Kandas said they had. He would not give consent, so they had tried two times unsuccessfully. **SENATOR DOHERTY** said the man was certainly abusing the system, and the committee might want to consider a retroactive applicability section to the bill.

Closing by Sponsor:

REPRESENTATIVE NELSON closed on HB 340. If the committee would care to put a retroactive applicability on the bill, it would be appreciated by the family, he said. He urged a favorable consideration.

CHAIRMAN BRUCE D. CRIPPEN ASSUMED THE CHAIR.

HEARING ON HJR 27

Opening Statement by Sponsor:

REPRESENTATIVE MATT McCANN, House District 92, Harlem, sponsored HJR 27 for the purpose of urging Congress to provide Constitutional status to the item veto. The item veto is to allow the President to make selective cuts instead of killing an entire bill because he does not appreciate the riders.

Proponents' Testimony:

None.

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

SENATOR BARTLETT said she had no trouble with a line item veto, which was available to the Governor of Montana and worked well. She was curious about the language on Line 9 relating to enhanced recision authority. Recision to her was something altogether different from an item veto, so she asked for clarification. **REPRESENTATIVE McCANN** stated that the intent was to urge Constitutional status of the item veto so that it would override enhanced recision, which could be overturned the following Congress. He said it would make it less likely to be messed with in the future. **SENATOR RIC HOLDEN** asked the sponsor about the political nature of the bill, since three Democrats signed on the bill. The sponsor stated that he was kind of a "tricky Democrat," and any person had the prerogative of signing the bill. He did not think it was a politically exclusive issue.

Closing by Sponsor:

REPRESENTATIVE McCANN stated that the item veto would be major reform of the federal spending process and favored by the

American people, as well as the people of Montana. He said he was proud to send this resolution to Congress.

HEARING ON HB 444

Opening Statement by Sponsor:

REPRESENTATIVE HAL HARPER, House District 52, Helena, sponsored HB 444 said it, like HB 340, was a loophole closer. It had been brought because of a real life situation and the court has said the law must be changed. The purpose of the bill is to protect children, and protect the rights of parents, he said. The bill draft request came from a man whose ex-wife was granted custody of their daughter. The ex-wife then married a man who had been convicted of a crime of sexual abuse of children. The victim was a young girl of the same approximate age of the daughter. Under current law, Line 30, if the custodial parent had committed any of the crimes in Subsection (6) (c), the man could have petitioned the court and had both visitation and custody modification proceedings started. But since the person that perpetrated the crime is NOT the wife, but the new husband, the law did not apply. HB 444 broadens that definition to say anyone living in that household with the child endangers the welfare of the child, not just the husband, nor just the wife. The sponsor said that friendly amendments were made in the House. When the bill was drafted, it referred to rebuttable presumptions starting at the bottom of Page 1. The language was stricken, the ideas grouped together and placed into Line (f), Section 1. He preferred that the language be reinstated. He felt they were important. In the middle of Page 3, and toward Page 5, the Committee of the Whole modified a committee amendment to include deviate sexual conduct with an animal. That amendment met his approval. He said an amendment would be offered by **SENATOR BARTLETT. (EXHIBIT 4).** The amendment would deal with custodial interference, or a person that takes a child away contrary to the custody/visitation agreement.

Proponents' Testimony:

Sharon Bakerson, member of MACeM, (Majority Against Child Molestation), stated that the organization agreed with HB 444. Page 4, Line 22, referred to the speed with which these issues may be handled. It is still not in the best interest of the children, she said. There are children living in dangerous custodial homes where step-parents have been convicted of sexual abuse of children. Sometimes it has been a year or more, while the other parents is trying to legally remove the child. In this particular case, the people have moved to California and the father has no idea where the daughter is. This measure would strengthen the laws of the books and perhaps move the process along faster. Criminals are given the right to a speedy trial, she said, and children should also be given the right to a speedy hearing to protect them and place them into a safe homes. She urged support.

Clause Sitte, Deputy Director, Montana Legal Services, said they represented low-income people in Montana. HB 444 may reduce some of the backlogs in the court system. 25 per cent of their cases were family law cases. He asked the committee to imagine themselves as a parent/caregiver when the absent parent who had had little contact and provided no support, gained custody of the child after facing court sanctions for non-support. Add to the stress that the absent parent was located in another state. He said the people would be forced to get an attorney in the other state, even though the absent parent does not have a leg to stand on. He told the committee that they see this situation often, where the absent parent uses child custody as a way of battling back against support cases. HB 444 creates several rebuttable presumptions while it would eliminate, or at least, reduce these kinds of problems. Subsection 3 contains two presumptions: 1) that the primary caretaker ought to stay as the primary caretaker, and 2) if the child custody case if brought after a child support case, it is presumed to be vexatious. Subsection 4 as presented in the House added two more further elements: failure to pay birth costs, and the failure to pay child support are presumed to be not in the child's best interest. The presumptions are intended to be rebuttable presumptions which means that if contrary evidence is presented, the court does not have to assume the presumption. They could ignore it. The presumptions as presented in Sections 3 and 4 meets the criteria and are the obvious. Child custody experts say that children do best in situations where they have stability and custodial continuity.
On behalf of the many parents who provide consistent, regular, day-to-day care for their children with little or no help from the other parent, he asked support for HB 444.

Mary Alice Clark, represented the Advocates for Montana's Children, in saying they strongly support HB 444 as presented by the sponsor.

Rob and Renae Mahr, Dillon, submitted a letter in favor of HB 444. **(EXHIBIT 5)**

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

SENATOR MIKE HALLIGAN asked the basis for taking the language out on Page 1 in the House committee. The sponsor said **REPRESENTATIVE BRAD MOLNAR** was reactive and further amended Page 3, which had originally referenced deviate conduct, period. The other amendments were made because the members felt the bill was tipping the burden away from the father, or tying the father's hands. He did not understand it. There was concern about the father providing the support through the primary family care, and that child support not counting. **SENATOR HALLIGAN** asked **Mr. Sitte** how the existing joint custody presumption played with the

level of presumptions seen in this bill? **Mr. Sitte** said they were rebuttable presumptions that played together very well. The court would assume joint custody is in the best interest of the child, unless best interest is not in the interest of the child. Then it looks to see if the best interest test is met. If one of the rebuttable presumptions is the person has failed to pay child support or birth costs, that presumption is rebutted, and the court need not consider joint custody. But, it does put an equal burden on both parents to support that child. **SENATOR DOHERTY** asked if the sponsor would like the rebuttable presumptions back into the bill. The sponsor replied that he would, if it would suit the committee's wishes. **CHAIRMAN CRIPPEN** said they probably struck Subsection 4 since (F) on Page 1 deals with Subsection 4. He did not understand why they struck Subsection 3B. **REPRESENTATIVE HARPER** said they just made an overly broad amendment and thought they had accomplished their purposes. He did not think it covered it at all.

Closing by Sponsor:

REPRESENTATIVE HARPER said he had no Senate sponsor and asked, if the committee would look favorably on the bill, they would provide one. He said he was also sensitive to the effective date of October 1, 1995. He said the case was on-going.

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EXECUTIVE ACTION ON HB 444

Motion: **SENATOR BARTLETT MOVED THE AMENDMENTS AS SHOWN IN (EXHIBIT 4).**

Discussion: **CHAIRMAN CRIPPEN** asked if she would like to insert an immediate effective date. She said she had no objections. **CHAIRMAN CRIPPEN** said that the **CHAIR WOULD RULE THAT AMENDMENTS HB044401.AVL TO HB 444 SHALL ALSO INCLUDE A THIRD AMENDMENT TO PROVIDE FOR AN IMMEDIATE EFFECTIVE DATE. SENATOR BARTLETT** explained her amendments said the request came from **REPRESENTATIVE WYATT AND SENATOR FORRESTER** because of constituent concerns of non-custodial parents taking children under visitation privileges, then consistently and persistently refusing to return the children to the custodial parent at the time agreed upon for their return. Although the Section on Custodial Interference says that they commit the offense if they kept the children too long, but there is no penalty, whether it is the first or the hundredth offense. This amendment, she said, says they could do that one time, but if this is a persistent pattern and they continue to keep the children beyond the visitation provisions of the custodial arrangement, they would be charged with custodial interference. It was modeled on similar language in a section of the code regarding returning the child. She urged approval of the amendment. The bill's sponsor had agreed with the amendment. She said the amendment would amend

the title as well. **SENATOR HALLIGAN** said there were two years to challenge the title problem. **Valencia Lane** said the purpose of the title was to give notice to interested parties, the public and legislators. When amending the title and stretching the contents of the bill, particularly late in the game, she thought there could be a title problem. She said it could be challenged for defective title only for two years after the effective date. **SENATOR BARTLETT** said **REPRESENTATIVE WYATT,** in pursuing this topic, went to the Child Support Enforcement Division to see if any of their bills might incorporate this provision. Theirs did not and they felt HB 444 came as close as any. **CHAIRMAN CRIPPEN** asked if it would be appropriate to have a severability clause. **Ms. Lane** said they could certainly put that in, and if the court wants to save parts of the bill, they could use that severability clause. There would be no guarantee that they would not strike down the entire bill, but she felt it would help.

Vote: On **SENATOR BARTLETT'S MOTION TO AMEND HB 444 AND TO ADD AN IMMEDIATE EFFECTIVE DATE,** the **MOTION CARRIED** on an oral vote with **SENATOR HALLIGAN** voting no.

Motion/Vote: **SENATOR HALLIGAN MOVED TO AMEND HB 444 BY THE ADOPTION OF A SEVERABILITY CLAUSE.** The **MOTION CARRIED UNANIMOUSLY** on an oral vote.

Discussion: **CHAIRMAN CRIPPEN** asked the committee's feeling on the stricken presumptions in the bill. He asked if by putting some of that information in another place in the bill, would it take it out of the role of a rebuttable presumption? If so, the House amendments would strengthen the portion of the bill.

Motion: **SENATOR DOHERTY MOVED TO RE-INSERT 3 (a) and (b).**

Discussion: **SENATOR HALLIGAN** thought there was a fine line. The consideration of a relevant factor was less of a look at the issue than a presumption obviously was and the amendment hadn't taken care of it. He felt that the House committee could put it with the considerations but it certainly had greater weight as it was drafted as a rebuttable presumption. Their amendment tempered that, he said. **SENATOR DOHERTY** said that in that fine line the committee had weakened the bill as far as failure to pay birth-related costs or child support.

Vote: The **MOTION CARRIED UNANIMOUSLY** on an oral vote.

Motion: **SENATOR DOHERTY MADE A MOTION TO STRIKE THE NEW SUBSECTION A., AND INSERT 4 (A) AND 4 (B).**

Discussion: **SENATOR DOHERTY** explained that the court, considering all relevant factors, is advised to think about the following things. Making rebuttable presumptions would be their policy and determination that if birth-related costs and child support are not paid, that would not be in the best interest of the child. As a matter of policy, the legislature would be

saying their bottom line is the consideration of those factors, and a very good explanation would be required in non-payment cases. **CHAIRMAN CRIPPEN** explained the motion as follows: the amendment would strike Lines 21 and 22 of Page 1, Subsection (f), further, on Page 2, Lines 5-9, re-insert Subsection 4. **SENATOR BARTLETT** said, "rebuttable presumption," meant going into a case with a fact being presumed, but someone with a good argument about why they did not pay can overcome that presumption and have the determination made in their favor. **SENATOR BAER** said it depended on how strong they wanted to make it. It is the duty of the court to consider all relevant factors. It would be a lesser standard of proof than rebuttable presumption which was included in the stricken statement they were seeking to reinstate.

Vote: The **MOTION CARRIED** on an oral vote, with **SENATOR HOLDEN** voting no.

Motion: **SENATOR HALLIGAN MOVED THAT HB 444 BE RECOMMENDED CONCURRED IN AS AMENDED.** The **MOTION CARRIED UNANIMOUSLY** on an oral vote. **SENATOR DOHERTY** offered to carry the bill onto the Senate floor.

EXECUTIVE ACTION ON HB 340

Motion: **SENATOR BARTLETT MOVED THAT HB 340 BE AMENDED BY AN IMMEDIATE EFFECTIVE DATE TO BE INCLUDED IN HB34001.AGP AS SHOWN IN (EXHIBIT 3).**

Discussion: **SENATOR HALLIGAN** expressed his concern about the title. He thought it was a good amendment, but should be in a separate bill. It could be challenged within the next two years. He would have to vote against it on those grounds, he said. **SENATOR BARTLETT** pointed out that **Greg Petesch** felt the title could be stretched to accommodate these amendments. **CHAIRMAN CRIPPEN** asked why it would be codified in Title 41. **Valencia Lane** said the Title encompassed the abuse and neglect sections. **Valencia Lane** said she believed there was a title problem. If it were the first hearing on the first committee, she would not have the reservations, but at that late date, it would be stretching the bill somewhat. She said to address that problem, they could put in a severability clause.

Motion: **IN A SUBSTITUTE MOTION, SENATOR HALLIGAN MOVED TO SEGREGATE THE IMMEDIATE EFFECTIVE DATE TO AMEND HB 340.** The **MOTION CARRIED** on an oral vote.

Discussion: Reverting back to the original motion of amendment items # 1 and # 2, **SENATOR ESTRADA** asked how important the amendment was to **SENATOR BARTLETT** and if it would jeopardize the bill. She replied that she had been asked to work on the issue over 18 months prior to the session. She didn't feel it warranted a separate bill so she had asked the legislative council to watch for a similar topic. She did not think it would

jeopardize the bill in the legislative process, but expressed some doubt about the title problem. She thought it could be rectified by the severability clause. **CHAIRMAN CRIPPEN** stated that the record should show that it was the intent of the committee that the bill as originally presented to them, along with the immediate effective date should not be challenged. And further, their concerns about a title problem, if there is one, was recognized and they further instructed the severability clause to give a reviewing judge the flexibility of relying on the clause should they find a problem with the title. **SENATOR BARTLETT** agreed. She had consulted **Greg Petesch** and he did not think there would be a problem. She had also approached **REPRESENTATIVE NELSON** and made clear to him that she wanted in no way to jeopardize the thrust of the bill.

Motion/Vote: **ON THE MOTION BY SENATOR BARTLETT TO AMEND HB 340 BY THE ADDITION OF ITEMS # 1 AND # 1, IN ADDITION TO THE SEVERABILITY CLAUSE,** the **MOTION CARRIED** on a roll call vote of 7-4.

Discussion: **SENATOR DOHERTY** said he wanted to consider a retroactive applicability date. When asked to explain, he said the argument could be made against a retroactive applicability by the individual who became the parent of the children when he adopted them. His argument would be that he was the parent, and they changed the law in the middle and it should only apply to every case arising after the date of the act. He expressed concern that it would not help the Kandas family. The discussion had convinced him to accept an immediate date. **SENATOR HALLIGAN** asked why they had listed only certain offenses. He said they would be back in two years with someone who had fallen through the loophole. He said the crime of rape was not even included in the list, which was certainly more heinous than others listed. **Valencia Lane** said Title 45, Chapter 5, Part 5, on sexual crimes, included: sexual assault, which this bill would add; 503, intercourse without consent; 504, indecent exposure; 505, deviate sexual conduct; 507, incest. She did not know why sexual intercourse without consent and possibly incest were not in the laundry list. **SENATOR DOHERTY** said the concern was absolutely correct and it demonstrated the danger of laundry lists.

Motion/Vote: **SENATOR HALLIGAN MOVED TO INCLUDE FROM TITLE 45, CHAPTER 5: 503 - SEXUAL INTERCOURSE WITHOUT CONSENT, 507 - INCEST, AND 627 - RITUAL ABUSE OF CHILDREN, TO FURTHER AMEND HB 340 IN SECTION 1, SUBSECTION 1, (i).** The **MOTION CARRIED UNANIMOUSLY** by an oral vote.

Motion/Vote: **SENATOR NELSON MOVED THAT HB 340 BE RECOMMENDED CONCURRED IN AS AMENDED.** The **MOTION CARRIED UNANIMOUSLY** on an oral vote. Either **SENATOR MIKE SPRAGUE** or **SENATOR BARTLETT** will carry the bill to the Senate.

EXECUTIVE ACTION ON HB 323

Motion: **SENATOR BAER MOVED THAT HB 323 BE RECOMMENDED CONCURRED IN.**

Discussion: **SENATOR BAER** stated that if HB 232 would pass the Governor's office, this bill would be redundant. **SENATOR BISHOP** asked if this bill was brought in light of the Brady bill. **SENATOR BAER** replied that it was, but the bill would not contravene the Brady bill in any way. It would exempt the people who have a concealed weapon from being subject to the five-day waiting period required by the Brady bill. But the bill would be satisfied entirely because the check-out requirements under a concealed weapon permit are far more stringent and broader than those required by the Brady bill, so it would not be offended.

Vote: The **MOTION CARRIED UNANIMOUSLY** on an oral vote. **SENATOR BAER** offered to carry the bill.

EXECUTIVE ACTION ON HB 547

Discussion: **Valencia Lane** explained that the committee had already adopted one set of amendments previously **(EXHIBIT 6)**, and another set was presented by **SENATOR BAER (EXHIBIT 7)**. **SENATOR BAER** said these amendments were submitted by the sponsor. There were dangers to having a laundry list of crimes, he said. On Page 2, Line 9, item (m), they list the Section which would require that any person that committed a felony with the use of a firearm would be banned for life under the direction of the bill.

Motion: **SENATOR BAER MOVED THAT THE HB 547 BE FURTHER AMENDED BY INCLUDING THE 7 AMENDMENTS AS CONTAINED IN HB054703.AVL (EXHIBIT 7).**

Discussion: **Beth Baker, representing the Department of Justice,** clarified that originally the bill came out of the recommendations of the Brady law at the request of the Attorney General's Office. That working group suggested that all convicted violent felons be prohibited from possessing firearms. This is a policy judgement for the legislature to make, she said, and stated their department was not going to take a position on the amendments. The amendment would narrow the class of offenders who would be prohibited from possessing firearms and only apply to those who had been previously sentenced. It would not apply to the people convicted of the list of offenses now specified in Section 2, but had not been sentenced for using a firearm. It would not cover a person who had committed rape, for example. She thought the public ought to understand that. **SENATOR BAER** said he would not be adverse to incorporating anyone who committed a dangerous felony, but he felt that was not what the sponsor of the bill had intended. He said under federal law

a person would not be allowed to own a firearm if convicted of a felony, not necessarily even a dangerous felony, and it would prevent them from lawfully purchasing a firearm. He did not see much of a conflict. **CHAIRMAN CRIPPEN** asked what 46-18-221 was. **Beth Baker** stated that it was an enhanced penalty that may be used if the sentencing court makes a finding that a person used a dangerous weapon. In answer to whether this would satisfy her concerns, she said it would still apply to a smaller class of violent offenders than if the amendment were not adopted. The bill would apply to all those offenses whether they were committed with a dangerous weapon or not. There were two reasons the amendments were narrowing the group of offenders: 1) this section, 46-18-221 only applies where the person did use a dangerous weapon, and 2) it only applies when the person is sentenced under that provision. Often, in a plea bargaining situation, they will agree that they won't get an additional sentence so they can get them to plea bargain another offense. She didn't know how much difference it would make, she just thought they should understand. **SENATOR BAER** said he took no position, but thought the intent of the sponsor should be given preference over the Department of Justice. **CHAIRMAN CRIPPEN** expressed concern over the exclusion of some crimes, such a aggravated assault, because of the exclusion in the amendments. He suggested passing the amendments and notifying the House of the concerns. **SENATOR DOHERTY** said they should also listen to the policy judgements of the department, and also should decide whether to narrow or expand the ability to prohibit convinced felons of owning a firearm. He felt any convicted felon gave up a lot of rights in committing a crime, one of which should be the right to own a firearm. He did not want to narrow the scope of the bill. **CHAIRMAN CRIPPEN** said they could agree on Item # 1 of the amendments.

Motion/Vote: **IN A SUBSTITUTE MOTION, SENATOR BAER MOVED TO AMEND HB 547 BY AMENDMENT ITEM # 1 OF HB054703.AVL.** The **MOTION CARRIED UNANIMOUSLY** on an oral vote.

Motion/Vote: **SENATOR BAER MOVED TO AMEND HB 547 BY AMENDMENT ITEMS 2-7 OF THE AFOREMENTIONED DOCUMENT.** The **MOTION FAILED** on an oral vote.

Discussion: **Beth Baker** explain that because they did not pass amendment item # 2, amendment # 1 would remove some language on Lines 25 and 26. They would have to strike, "following offenses," on Line 25, and "if a person knowingly. .," **CHAIRMAN CRIPPEN** stated that they would have to further amend the bill to strike the identical language on Line 25 and 26.

Motion/Vote: **SENATOR BAER MOVED THE AMENDMENT AS STATED BY THE CHAIRMAN.** The **MOTION CARRIED UNANIMOUSLY** on an oral vote.

Motion/Vote: **SENATOR BAER MOVED THAT HB 547 BE RECOMMENDED CONCURRED IN AS AMENDED.** The **MOTION CARRIED** on an oral vote with

SENATOR BARTLETT voting no. **SENATOR BAER** had agreed to carry the bill on the Senate floor.

EXECUTIVE ACTION ON HB 160

Motion: **SENATOR HOLDEN MOVED TO AMEND HB 160 AS CONTAINED IN HB016001.AVL (EXHIBIT 8) FOR THE PURPOSES OF DISCUSSION.**

Discussion: **SENATOR HOLDEN** explained that he thought the bill was good with the exception of prosecuting the FBI agents and federal marshals. He didn't think the state would stand much of a change in those actions. He did believe that the phone call should be made to the local sheriff unless it was to investigate their (sheriff's) office. Another part of the amendments had to do with the written notice. He thought the notice could be by phone or written. On Page 2, Line 14, where the bill referred to notice, he thought they could strike the word, "written," and insert, "give notice." That was it would not tie the hands of federal employees to make a written notice when it may be a snap decision to go into a drug transaction, for example. **CHAIRMAN CRIPPEN** summarized the amendments as to two items: 1) striking the requirement that there be written notice, and 2) giving the option of the 24-hours' notice to either written or oral. **SENATOR HOLDEN** said the phone system may provide documentation of the notice by phone. He discussed the amendments by **Gary Marbut**, which were also presented to the committee. **(EXHIBIT 9).** **SENATOR BAER** stated that some atrocities had been committed by regulatory agencies, but that 95 per cent are probably forthright, law-abiding agencies. But, he said, in some incidences, the Constitution was trampled. When that takes place without the proper legal provisions allowing them search and seizure, these and the subsequent behaviors are criminal acts. He said the federal agents should be prosecuted for criminal acts when they act without authority and without Constitutional backing because they are acting outside the scope of the Constitutional provisions whether they are federal employees or not. **SENATOR HOLDEN** asked if, before a FBI agent can bust the door down to a house to check for drugs, did he have to have a search warrant from a federal judge? **CHAIRMAN CRIPPEN** said yes, unless there is exigent circumstances, or strong probable cause that a person would have committed a federal crime and would be in danger of fleeing. **SENATOR HOLDEN** asked if a search warrant was necessary, wouldn't it be common sense that the federal law would supersede any state statute that might pass? **CHAIRMAN CRIPPEN** said if the FBI agent should willfully and maliciously act outside the course of the scope of his jurisdiction, they would be subject to federal penalties and maybe even state penalties. This bill deals with notice, he said, so if they did not give notice, they would be subject to penalties. He was concerned that the crime itself would be not be definable. He did not think it could be proven. **SENATOR HALLIGAN** said he did not know how they would then attach a civil right to the failure to provide a procedural safeguard notice or what the damages

would be if someone were shot, killed or injured. **SENATOR BAER** said he thought the mentality behind the bill was if they were to give notice to the sheriff, some of the incidents could have been avoided. Perhaps he would know the people involved and be able to intervene and avoid the violent activity. If they would not give notice and grievous bodily harm or property damage results, and it would be found the warrant was not property served, and the property was left in shambles, did they not think there should be a cause of action against them? **CHAIRMAN CRIPPEN** asked if the bill would provide that the sheriff would have to be on the scene? Several people answered no. He asked about a situation where the sheriff was notified, but was told not to be in attendance, then the federal troops invaded the wrong farmhouse. He said those federal agents would be subject to civil and criminal sanctions of some kind, wouldn't they? **SENATOR BAER** said they had escaped those penalties thus far and the bill would provide for more responsibility on their part to avoid these situations. **SENATOR ESTRADA** stated that the bill without the amendments, would give the "little guy" a better chance to protect themselves in court. She questioned the necessary warrants by federal officers, and that sometimes they were not required. **CHAIRMAN CRIPPEN** said the warrant didn't mean anything. It would only give them a cloak of authority to enter and to seize. She thought any federal agency already had a cloak of authority to do just about whatever they wanted to, and get away with it. She could not support the amendments. **SENATOR BAER** related a situation where a female federal agent had stomped a kitten to death before a suspect family. He said this bill would reduce those sorts of inflammatory actions. **CHAIRMAN CRIPPEN** stated that it would be correct with the notice provisions, but Section 3 would not help those situations. He said that agent would be charged under a different section of the law. **SENATOR NELSON** reminded the group that **REPRESENTATIVE ELLIOT** had checked with some of the sheriffs in the state. They felt they already had the cooperation of the federal agents. **SENATOR HOLDEN** said that while they were somewhat aggressive toward federal agents, they did certainly need them in rural counties where law officials did not want to confront a "bunch of druggers." They just drove by the house in his district, he said, because of old family networks and other reasons. **CHAIRMAN CRIPPEN** noted his interest in providing a strong message about the notice provisions. **SENATOR ESTRADA** asked if most of the federal agents were from Montana? **CHAIRMAN CRIPPEN** said that **Attorney General Matteucci** said most of them were from Montana. **SENATOR BAER,** in answer to **SENATOR HOLDEN'S** statement, said there was nothing in the bill that would curtail the proper procedures taken by federal law enforcement officers other than the fact they would require notice be given to the sheriff to avoid unnecessary confrontations that may result in violence. They were not asking them to toe the line in any other way. **CHAIRMAN CRIPPEN** said the bill would do that, even without the amendments. In Section 3, it would not do that. He wondered what authority the state could have over federal agents, or if it was a state supremacy clause. **SENATOR HALLIGAN** said if they were acting

under federal authority, the state would have no authority to intercede. He said there was a huge difference between an IRS agent and a regular law enforcement officer conducting a routine investigation. He was concerned that it would aid people who do commit conspiracies and crimes by handing them an appealable issue of proper notification. He had a problem with Section 4. **SENATOR DOHERTY** stated that the passage of the bill will ensure lawsuits the first time there was a failure to notify. It will be challenged on its face, as well, as a conflict between the supremacy clause and the 10th amendment. He questioned if it was worth the state's money. He spoke of his concern about Subsection A. in Section 2. He said now the tribes were begging for more federal assistance because of high crime rates. If they pass the bill, he thought they would further muddy the already muddy waters with jurisdiction on Indian reservations.

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SENATOR BAER said if they did not provide a deterrent, then no one was going to abide by the law. There was a very serious mentality out there, he said. When they heard the U.S. Marshall's testimony in the hearing, he thought it was a "them vs. us," mentality if he ever saw one. Other law enforcement offers apologized for the marshall's behavior after the hearing. He maintained that all the bill was trying to do was alleviate tensions by creating a mere notice and providing for penalties if they don't give that notice. If they don't give notice and it results in loss of life or property, it enhances the illegalality and makes them more prosecutable, which they should be. He stated that the bill is a mild request by the people of Montana. If the federal officials are offended by it, then he thought they had a problem. He said they work for us, and are supposed to work with us. He said talk of Indian reservations was only a red herring and had no place in the discussion.

Motion: **ON SENATOR HOLDEN'S MOTION TO AMEND HB 160 BY ITEMS # 1 AND #8 WHICH DEALT WITH THE ELIMINATION OF THE REMEDY PROVISION.** The **MOTION CARRIED** 9-2 by a roll call vote.

Discussion: **CHAIRMAN CRIPPEN** had asked **Valencia Lane** to examine and correlate amendments # 2 and # 7 of **SENATOR HOLDEN'S** amendments and **Mr. Marbut's** amendments 2-7. **SENATOR HALLIGAN** objected. He asked for a vote up or down on the first set of amendments. **Valencia Lane** said the # 9 and # 10 of the **Marbut** amendments had been rendered moot by the passage of # 8 on **SENATOR HOLDEN'S.** She said they amend the two amendments in the bill stricken by the amendments just adopted. She said they could cross off # 9 and # 10. She said they could circle # 3 and # 4 because they are separate. The rest of them, # 1, # 2, # 5, # 6, # 7 and # 8 all deal with the question of written notice. She said they had to choose between **SENATOR HOLDEN'S** amendments or **Marbut's** amendments because they deal with the same issue. **SENATOR HOLDEN'S** amendments just simply strike the word, "written," and take out appropriate language wherever it occurs

in the bill. It would require 24-hours' notice, period. **Mr. Marbut's** amendments deal with the same issue, but instead of striking, "written," they leave 24-hours written and insert, "telephonic or facsimile."

Motion: **SENATOR HOLDEN MOVED TO FURTHER AMEND HB 160 BY ADOPTING THE AMENDMENTS HB016001.AVL, # 2-7.**

Discussion: **SENATOR NELSON** stated that the **HOLDEN** amendments were cleaner than the **Marbut** ones being considered, although doing about the same thing. She said if the federal agents would have to go in on a situation, they may have to be somewhat secretive about it. She even objected to the 24 hours because she felt there were no secrets. Once told, it is no longer quiet, and they do sometimes rely on these people. She questioned the legislation of courtesy for cooperation. She said she did wish to send a strong message, but was hesitant to tie their hands. **SENATOR BAER** said he supported **Mr. Marbut's** amendments because if they took out, "written," they could claim they sent a notice by smoke signal. This amendment would allow oral, written or facsimile notification.

Vote: The **MOTION CARRIED** on an oral vote with **SENATORS ESTRADA, BAER AND LORENTS GROSFIELD** voting no.

Discussion: **SENATOR HOLDEN** presented a handout. **(EXHIBIT 10)** He had spoken with **Mr. John Connor** about the coordination clause in their rules procedure.

Motion: **SENATOR HOLDEN MOVED THAT THEY ADOPT THE COORDINATION PROCEDURAL RULES UNDER 23-2-204 FOR THE PURPOSE OF DISCUSSION.**

Discussion: **SENATOR HOLDEN** said that originally **Mr. Connor** had thought it would not be appropriate, then decided it could be put into statute. **Ms. Lane** pointed out that rules adopted under MAPA, the force and effect of the law, unless they are returned by a court, are redundant. **CHAIRMAN CRIPPEN** said it wouldn't hurt anything, though. Perhaps it would add to the message. **SENATOR BAER** replied that it is only saying that they must make a good faith effort. This bill is saying a good faith effort is not enough and they must notify the sheriff. Administrative rules are always subservient to conflicting statutory law. He did not like administrative rules anyway, he said. **SENATOR HALLIGAN** asked if it was intended to strike the section dealing with notice? **SENATOR HOLDEN** said they could put this Section in where they took Section 3 out. **SENATOR HALLIGAN** said they already had a 24-hour notice provision. **SENATOR HOLDEN** said it could be another clarification section perhaps. **CHAIRMAN CRIPPEN** asked if there was a problem with conflicting sections? **Ms. Lane** stated that even in the rule as drafted, which would become the statute as drafted, the state is telling a federal agency what to do. There might be some problem with that.

Motion: **SENATOR HOLDEN REQUESTED THAT HIS MOTION BE WITHDRAWN.**

Motion: **SENATOR HALLIGAN MOVED TO STRIKE THE 24-HOUR REQUIREMENT.**

Discussion: **SENATOR HALLIGAN** stated that state and federal law enforcement agents, in dealing with each other as brethren should be able to deal with each other in their coordinations in a reasonable time.

This executive session was interrupted at the direction of the Chairman to hear some people brought in at their request on HB 491.

EXECUTIVE ACTION ON HB 491

Discussion: **Jim Kembel, representing the City of Billings,** said they had worked on amendments with **Jerry Williams of the Police Protective Association**, and **Alec Hansen from the League of Cities and Towns, Police Chief Bill Ware from the Montana Police Chiefs Association** and also **Troy McGee from the Montana Police Association.** He stated that a representative from the Attorney General's Office had assisted with the wording. They had checked with the sponsor who agreed with the amendment, but who had asked for **SENATOR BAER'S** approval. He assured **SENATOR ESTRADA** that **Billings Police Chief Ward** was in agreement. They had amended the title to say, " An act clarifying the law enforcement responsibility of the Sheriff's and Chiefs of Police amending Section 7-32-2121 and 7-32-4105 MCA, and providing for an immediate effective date." Then, at the bottom of the bill in the current Section 2 on the effective date, which would become Section 3. The new Section 2 is taken from Section 7-32-405, which is the duties of the Chief of Police. The first part, Subsection 1 will read, "the Chief of Police is the chief law enforcement officer of a city or a town. It is the duty of the Chief of Police. . . ." **Valencia Lane** said that Title 7, Chapter 32 is all law enforcement for local government. Chapter 21 is sheriff's and Chapter 41 is municipalities and their duties. They were suggesting to amend 7-32-4105 which currently relates to the duties of the Chief of Police. They would make a similar amendment in that Section on Page 1, Lines 11 and 12 with reference to the chief law enforcement officer. She did not know if it answered the concerns raised on Page 1, Lines 11 and 12 that said the Sheriff is the chief law enforcement officer of the County. She thought they may need to say, "except in incorporated cities or towns." **Mr. Kembel** said it was discussed with the member of the AG's office who did not seem to have a problem with the wording. **Ms. Lane** said they still have the bald-faced assertion on the front page of the bill that the sheriff was the chief law enforcement official of the county, period. Even if it included the police chief, there may be some implied conflict or contradictions that you could address by saying, "except in. . ." **Mr. Kembel** said he had no problem with that. **Ms. Lane** explained the title would be amended so that it reads, "An act clarifying the law enforcement responsibilities of

Sheriffs and Chiefs of Police," and a reference to 41-32-4101 would have to be amended in. That would be amendment # 1, amending the title. Amendment # 2 would be: Page 1, Line 11, after duties of the sheriff, strike (b), and insert, "except in an incorporated city or town, the sheriff is the chief law enforcement officer of the county." Amendment # 3 would be: add 7-32-4105 to the bill and amend it to say, "the chief of police is the chief law enforcement officer of the city or town," instead of "the duties of a chief of police. . ." **SENATOR BISHOP** asked if any consideration was given to the consolidated cities and towns? **Mr. Kembel** said in Anaconda they have a Chief of Police that is elected by charter. In Butte/Silverbow they have a Sheriff that is elected by charter. So there is only one law enforcement officer in either district. **SENATOR NELSON** said there were small towns that had no other law enforcement officer than the sheriff. **CHAIRMAN CRIPPEN** said it would be provided for in that section. **SENATOR JABS** asked if they needed the bill then? **SENATOR BISHOP** said the problem was that some federal laws refer to the chief law enforcement officer of a county. **Ms. Lane** said she was uncomfortable with the bill. The chairman suggested the bill be discussed further on the following day.

EXECUTIVE ACTION ON HB 160

Motion: **SENATOR HALLIGAN REPEATED HIS MOTION TO STRIKE THE 24-HOUR REQUIREMENT.**

Discussion: He said he believed this provision would neither help nor hurt. Extremely sensitive information, once given, would no longer be secret. Reasonable notice would be whatever the professionals think it is, he said. The only other way to do that would be to adopt the administrative rule. **SENATOR JABS** said 24 hours was too long. In some cases, the needed element of surprise would be lost. **SENATOR HOLDEN** asked **SENATOR HALLIGAN** if they were going to insert, "reasonable?" **SENATOR HALLIGAN** said no, it was not a litigatable issue. **SENATOR ESTRADA** said the bill was before them because the people of the state and nation had fear of the "feds". She did not blame them because of past mistakes of wrong addresses, etc. She asked why the 100 people in the House didn't trash this bill and the lawyers on this committee did? **SENATOR BAER** said the substantive integrity and the virtuous intent of the bill had already been trashed by **SENATOR HOLDEN'S** amendments. He had intended to carry the bill, but thought **SENATOR HOLDEN** should shoulder the responsibility now. **CHAIRMAN CRIPPEN** disagreed, saying a bill, once given to the committee, belonged to that committee and anyone on the committee would be allowed to amend it.

Motion: **SENATOR NELSON, IN A SUBSTITUTE MOTION, MOVED A COMPROMISE PROVISION OF 12 HOURS.**

Discussion: **SENATOR JABS** thought it would severely hamstring law enforcement. **CHAIRMAN CRIPPEN** said exceptions were listed on Page 25 dealing with that subject.

Motion: **SENATOR NELSON, WITHDREW HER MOTION.**

Discussion: In closing on the original motion, **SENATOR HALLIGAN** said that **REPRESENTATIVE HARPER'S** bill was drastically changed in the House by **REPRESENTATIVE MOLNAR.** He said it was not an abusive process that bills get changed in the process. He said the imposition of their perspective on the process was healthy.

Vote: The **MOTION CARRIED** on an oral vote with **SENATORS BAER AND ESTRADA** voting no.

Discussion: **SENATOR DOHERTY** stated that in looking at the exceptions, it did not appear to be an exception that they could waive the notice if the federal agent believes that the individual who was the subject of an investigation was about to flee. It also did not say anything about waiving the notice if they arm a bazooka. It did refer to exigent circumstances which might require swift action. **CHAIRMAN CRIPPEN** read about "witnesses." **SENATOR DOHERTY** asked what if they did not witness it? What if they believed that the individual had a stash of dangerous drugs and somehow are acting nervous, filled the car with gas and look like they are leaving? **CHAIRMAN CRIPPEN** asked why they couldn't amend (b) to specify a federal employee witnessing the commission or has reasonable cause to assume a crime would require immediate arrest. **SENATOR DOHERTY** said he considered it an obstruction of legitimate law enforcement activities which may come about because of an activist bill. **SENATOR ESTRADA** said the agent could just come up and slam them on the ground like they do now. She maintained they were not accountable now. **SENATOR DOHERTY** said he believed law enforcement officials were accountable. He said prosecuting attorneys were accountable. If they have rogue cops in Montana, or rogue federal agents, he said they should be prosecuted to the fullest extent of the law. This bill, even with the amendments, in talking to the notice given, will create opportunities for obstructing justice. He doubted if there was a way to deal with all the possible circumstances.

Motion: **SENATOR HOLDEN MOVED THAT HB 160 BE CONCURRED IN AS AMENDED.**

Discussion: **SENATOR BARTLETT** said, in contrast to **SENATOR ESTRADA'S** experiences, her constituents were not speaking to her about fear of federal agents. Even if the federal agents gave notice to a sheriff and gave the address, then made a mistake, the sheriff is not always in a position to prevent that from happening. She got no sense of protection that they would be precluding those types of errors by agents. Even with the amendments, the bill seemed unconstitutional on its face because it tries to assert state authority over the actions of federal

employees. This would be patently unconstitutional, she said. **SENATOR DOHERTY** said the bill was supposed to be a message bill. He said the message should be very clear. The prosecutors he knew and the federal agents he knew were as cognizant of constitutional rights as he was. They had to be, to get convictions to stick. The message the bill sends further than encouraging law enforcement division to talk to each other is: it is O.K. to mistrust government. It is O.K. to mistrust law enforcement. It might be acceptable in our society to defy a court order or a subpoena. He said it was not acceptable conduct in our society. When they talk about federal agents as, "storm troopers," he had real problems. When they talked about civil uprisings, he had problems if people believed the laws were being enforced unfairly or if folks thought they had been singled out for prosecution for political or religious beliefs. Then, he said, let's have at it in our legal system. But, these confrontations come because someone is defying authority. There was a proper place to do that in our system. It is often said that, "patriotism is the last refuge of a scoundrel." He said he did not want defiance of authority in Montana to become that last refuge. He asked to vote the bill down. **SENATOR BAER** said he refused to be accused of being inebriated with the exuberance of his own verbosity. So, he said if the bill would have been a sensible mitigation of the potential for disastrous mishaps in the future, it would have prevented a buffer for those potential situations in light of what has happened in the past. Now they would leave the situation as it is and do nothing, he said. **SENATOR GROSFIELD** recalled the testimony of **Attorney General Matteucci.** He agreed that the purpose was a strong message as they had other 10th amendment bills regarding states' rights. But the U.S. Attorney had talked about it already, she had said. The chairman had suggested written direction to the various agencies. He said it was a good idea. This bill, particularly in Section 4, was unconstitutional. In Section 2, it is probably unconstitutional. He had a hard time voting for any bill that he felt was unconstitutional.

Motion: **SENATOR GROSFIELD MADE A SUBSTITUTE MOTION THAT HB 160 BE RECOMMENDED BE NOT CONCURRED IN AS AMENDED.**

Discussion: **CHAIRMAN CRIPPEN** commented further on the bill. He asserted that even those folks who are known tax protesters have the right to due to process. Without that right, there would be no freedom of choice, and certainly the legislature would not be making those choices. While he felt they had stripped the bill of its salient parts, he felt it would send a message, particularly with the agencies who were represented at the hearing. He said a minority motion would be appropriate.

Vote: The **MOTION CARRIED** on a roll call vote.

Discussion: **SENATOR HOLDEN** elected to carry the minority report.

EXECUTIVE ACTION ON HB 332

Motion: **SENATOR ESTRADA MOVED THAT HB 332 BE RECOMMENDED CONCURRED IN.** The **MOTION CARRIED** on an oral vote, with **CHAIRMAN CRIPPEN, SENATOR GROSFIELD AND SENATOR DOHERTY** voting no.

ADJOURNMENT

Adjournment: **CHAIRMAN CRIPPEN** adjourned the meeting at 11:54 A.M.

BRUCE D. CRIPPEN, Chairman

JUDY FELAND, Secretary

BDC/jf

1

MONTANA SENATE
1995 LEGISLATURE
JUDICIARY COMMITTEE

ROLL CALL DATE 3-20-95

NAME	PRESENT	ABSENT	EXCUSED
BRUCE CRIPPEN, CHAIRMAN	✓		
LARRY BAER	✓		
SUE BARTLETT	✓		
AL BISHOP, VICE CHAIRMAN	✓		
STEVE DOHERTY	✓		
SHARON ESTRADA	✓		
LORENTS GROSFIELD	✓		
MIKE HALLIGAN	✓		
RIC HOLDEN	✓		
REINY JABS	✓		
LINDA NELSON	✓		

SEN:1995
wp.rollcall.man

SENATE STANDING COMMITTEE REPORT

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration HB 444 (third reading copy -- blue), respectfully report that HB 444 be amended as follows and as so amended be concurred in.

Signed: _____
Senator Bruce Crippen, ~~Chair~~

That such amendments read:

1. Title, lines 4 and 5.
Following: "~~PRESUMPTIONS~~" on line 4
Strike: remainder of line 4 through "CONSIDER" on line 5
Insert: "REBUTTABLE PRESUMPTIONS"

2. Title, line 8.
Following: "CRIME;"
Strike: "AND"
Insert: "REVISING THE OFFENSE OF CUSTODIAL INTERFERENCE;"
Following: "40-4-217,"
Strike: "AND"
Following: "40-4-219,"
Insert: "AND 45-5-304,"
Following: "MCA"
Insert: "; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE"

3. Page 1, lines 21 and 22.
Strike: subsection (f) in its entirety
Renumber: subsequent subsections

4. Page 2, line 10.
Following: line 9
Insert: "(3) The following are rebuttable presumptions and apply unless contrary to the best interest of the child:

(a) Custody should be granted to the parent who has provided most of the primary care during the child's life.

(b) A custody action brought by a parent within 6 months after a child support action against that parent is vexatious.

(4) The following are rebuttable presumptions:

(a) A knowing failure to pay birth-related costs that the person is able to pay is not in the best interest of the child.

(b) Failure to pay child support that the person is able to pay is not in the best interest of a child in need of the child support."

Amd. Coord. _____
Sec. of Senate

Senator Carrying Bill

641503SC.SPV

5. Page 5, line 15.
Insert: "**Section 4.** Section 45-5-304, MCA, is amended to read:

"**45-5-304. Custodial interference.** (1) A person commits the offense of custodial interference if, knowing that ~~he~~ the person has no legal right to do so, the person:

(a) ~~he~~ takes, entices, or withholds from lawful custody any child, incompetent person, or other person entrusted by authority of law to the custody of another person or institution;

(b) prior to the entry of a court order determining custodial rights, ~~he~~ takes, entices, or withholds any child from the other parent ~~where~~ when the action manifests a purpose to substantially deprive that parent of parental rights; or

(c) ~~he~~ is one of two persons who has joint custody of a child under a court order and ~~he~~ takes, entices, or withholds the child from the other ~~where~~ when the action manifests a purpose to substantially deprive the other parent of parental rights.

(2) A person convicted of the offense of custodial interference shall be imprisoned in the state prison for any term not to exceed 10 years or be fined an amount not to exceed $50,000, or both.

(3) ~~A~~ With respect to the first alleged commission of the offense only, a person who has not left the state does not commit an offense under this section if ~~he~~ the person voluntarily returns ~~such~~ the child, incompetent person, or other person to lawful custody prior to arraignment. ~~A~~ With respect to the first alleged commission of the offense only, a person who has left the state does not commit an offense under this section if ~~he~~ the person voluntarily returns ~~such~~ the child, incompetent person, or other person to lawful custody prior to arrest."

NEW SECTION. **Section 5. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 6. Effective date.** [This act] is effective on passage and approval."

-END-

SENATE STANDING COMMITTEE REPORT

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration HB 340 (third reading copy -- blue), respectfully report that HB 340 be amended as follows and as so amended be concurred in.

Signed: _____
Senator Bruce Crippen, Chair

That such amendments read:

1. Title, line 4.
Following: "CHILD"
Insert: ", SEXUAL INTERCOURSE WITHOUT CONSENT INVOLVING A CHILD, INCEST INVOLVING A CHILD, AND RITUAL ABUSE OF A MINOR"

2. Title, line 9.
Strike: "AND"
Insert: "PROVIDING FOR TERMINATION OF PARENTAL RIGHTS IN CERTAIN INSTANCES;"
Following: "MCA"
Insert: "; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE"

3. Page 1, line 19.
Following: "45-5-502;"
Insert: "sexual intercourse without consent, as provided in 45-5-503, if the victim was a child; incest, as provided in 45-5-507, if the victim was a child;"

4. Page 1, line 20.
Strike: "or"

5. Page 1, line 21.
Following: "45-5-625"
Insert: "; or ritual abuse of a minor, as provided in 45-5-627"

6. Page 2, line 17.
Insert: "
NEW SECTION. **Section 2. Termination of parental rights -- felony involving sexual intercourse.** If a person is convicted of a felony in which sexual intercourse occurred or if a minor is adjudicated a delinquent youth because of an act that, if committed by an adult, would be a felony in which sexual intercourse occurred and, as a result of the sexual intercourse, a child is born, the court may terminate the offender's parental rights to the child at any time after the conviction or adjudication.

Amd. Coord. _____ Sen. BARTLETT
Sec. of Senate Senator Carrying Bill

651059SC.SRF

NEW SECTION. **Section 3. Codification instruction.** [Section 2] is intended to be codified as an integral part of Title 41, chapter 3, part 6, and the provisions of Title 41, chapter 3, part 6, apply to [section 2].

NEW SECTION. **Section 4. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 5. Effective date.** [This act] is effective on passage and approval."

-END-

SENATE STANDING COMMITTEE REPORT

March 21, 1995

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration HB 323 (third reading copy -- blue), respectfully report that HB 323 be concurred in.

Signed: _____
Senator Bruce Crippen, Chair

Amd. Coord.
Sec. of Senate

Sen. Baer
Senator Carrying Bill

651127SC.SRF

SENATE STANDING COMMITTEE REPORT

March 20, 1995

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration HB 547 (third reading copy -- blue), respectfully report that HB 547 be amended as follows and as so amended be concurred in.

Signed: Bruce Crippen
Senator Bruce Crippen, Chair

That such amendments read:

1. Title, line 5.
Following: "CRIMINALS;"
Insert: "ALLOWING THE SENTENCING ORDER TO INCORPORATE BY REFERENCE RULES SETTING CONDITIONS OF PROBATION, PAROLE, OR SUPERVISED RELEASE;"

2. Page 1, line 14.
Following: "society."
Insert: "If the sentencing judge incorporates by reference in the sentencing order rules of the department of corrections and human services or the board of pardons setting conditions of probation, parole, or supervised release with which the offender is required to comply, the incorporation by reference constitutes a specific enumeration of the conditions for purposes of this section."

3. Page 1, line 23.
Following: second "person"
Insert: "purposely or knowingly purchases or possesses a firearm after the person"

4. Page 1, lines 25 and 26.
Following: "offenses" on line 25
Strike: remainder of line 25 through "firearm" on line 26

5. Page 3, line 27.
Following: "**Applicability**"
Insert: "-- retroactive applicability"

6. Page 3, line 30.
Insert: "(3) [Section 1] applies retroactively, within the meaning of 1-2-109."

-END-

Amd. Coord.
Sec. of Senate

Senator Carrying Bill

641412SC.SRF

SENATE STANDING COMMITTEE REPORT

March 20, 1995

MR. PRESIDENT:
We, your committee on Judiciary having had under consideration HB 160 (third reading copy -- blue), respectfully report that HB 160 be amended as follows and as so amended be not concurred in.

Signed: _____
Senator Bruce Crippen, Chair

That such amendments read:

1. Title, line 7.
Strike: "PROVIDING FOR PROSECUTION OF FEDERAL EMPLOYEES VIOLATING THIS ACT;"

2. Page 1, line 23.
Following: "GIVING"
Strike: "AT LEAST 24 HOURS' WRITTEN"

3. Page 2, line 14.
Following: "GIVE"
Strike: "AT LEAST 24 HOURS' WRITTEN"

4. Page 2, line 15.
Following: "must"
Strike: "include a written statement, under oath, describing"
Insert: "describe"

5. Page 2, line 19.
Following: "(3)"
Strike: "(a)"
Following: "THE"
Strike: "WRITTEN"

6. Page 2, line 21.
Strike: "(i)"
Insert: "(a)"
Renumber: subsequent subsections

7. Page 2, lines 27 through 30.
Strike: subsection (b) in its entirety

8. Page 3, lines 1 through 14.
Strike: section 3 in its entirety
Renumber: subsequent sections

-END-

Amd. Coord. _____ Sen Crippen
Sec. of Senate Senator Carrying Bill

SENATE STANDING COMMITTEE REPORT

March 20, 1995

MR. PRESIDENT:

We, a minority of your committee on Judiciary, having had under consideration HB 160 (third reading copy -- blue), respectfully report that HB 160 be amended as follows and as so amended be concurred in.

Signed: Ric Holden
Senator Ric Holden

Signed: _____
Senator Larry Baer

Signed: Al Bishop
Senator Al Bishop

Signed: _____
Senator Sharon Estrada

Signed: Jerry Jabs
Senator Reiny Jabs

That such amendments read:

1. Title, line 7.
Strike: "PROVIDING FOR PROSECUTION OF FEDERAL EMPLOYEES VIOLATING THIS ACT;"

2. Page 1, line 23.
Following: "GIVING"
Strike: "AT LEAST 24 HOURS' WRITTEN"

3. Page 2, line 14.
Following: "GIVE"
Strike: "AT LEAST 24 HOURS' WRITTEN"

4. Page 2, line 15.
Following: "must"
Strike: "include a written statement, under oath, describing"
Insert: "describe"

5. Page 2, line 19.
Following: "(3)"
Strike: "(a)"
Following: "THE"
Strike: "WRITTEN"

Amd. Coord.
Sec. of Senate

Sen. Holden
Senator Carrying Bill

641353SC.SRF

6. Page 2, line 21.
Strike: "(i)"
Insert: "(a)"
Renumber: subsequent subsections

7. Page 2, lines 27 through 30.
Strike: subsection (b) in its entirety

8. Page 3, lines 1 through 14.
Strike: section 3 in its entirety
Renumber: subsequent sections

-END-

SENATE STANDING COMMITTEE REPORT

March 21, 1995

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration HB 332 (third reading copy -- blue), respectfully report that HB 332 be concurred in.

Signed: _____
Senator Bruce Crippen, Chair

Amd. Coord.
Sec. of Senate

_____
Senator Carrying Bill

651129SC.SRF

MONTANA SENATE
1995 LEGISLATURE
JUDICIARY COMMITTEE
ROLL CALL VOTE

DATE 3-20-95 BILL NO. HB 340 NUMBER 1

MOTION: Bartlett amendment

NAME	AYE	NO
BRUCE CRIPPEN, CHAIRMAN	✓	
LARRY BAER		✓
SUE BARTLETT	✓	
AL BISHOP, VICE CHAIRMAN	✓	
STEVE DOHERTY	✓	
SHARON ESTRADA		✓
LORENTS GROSFIELD	✓	
MIKE HALLIGAN	✓	
RIC HOLDEN		✓
REINY JABS	✓	
LINDA NELSON		✓
	7	4

SEN:1995
wp:rlclvote.man

carried

MONTANA SENATE
1995 LEGISLATURE
JUDICIARY COMMITTEE
ROLL CALL VOTE

DATE 3-20-95 BILL NO. HB 160 NUMBER 2

MOTION: Amend - Senator Holden #148

NAME	AYE	NO
BRUCE CRIPPEN, CHAIRMAN	/	
LARRY BAER		/
SUE BARTLETT	/	
AL BISHOP, VICE CHAIRMAN	/	
STEVE DOHERTY	/	
SHARON ESTRADA		/
LORENTS GROSFIELD	/	
MIKE HALLIGAN	/	
RIC HOLDEN	/	
REINY JABS	/	
LINDA NELSON	/	

SEN:1995
wp:rlclvote.man

9 2

carried

MONTANA SENATE
1995 LEGISLATURE
JUDICIARY COMMITTEE
ROLL CALL VOTE

DATE 3-20-95 BILL NO. HB 160 NUMBER 3

MOTION:

Grosfield - BNCIAA

NAME	AYE	NO
BRUCE CRIPPEN, CHAIRMAN	/	
LARRY BAER		/
SUE BARTLETT	/	
AL BISHOP, VICE CHAIRMAN		/
STEVE DOHERTY	/	
SHARON ESTRADA		/
LORENTS GROSFIELD	/	
MIKE HALLIGAN	/	
RIC HOLDEN		/
REINY JABS		/
LINDA NELSON	/	

SEN:1995
wp:rlclvote.man

6 5

passed

(43)

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 1
DATE 3-20-95
SEN. NO. HB 340

PETERSON and SCHOFIELD

ATTORNEYS AT LAW KENNETH D. PETERSON DANE C. SCHOFIELD • KEITH A. CHRISTIE

2906 3RD AVENUE NORTH • PARK ONE COMPLEX • BILLINGS, MONTANA 59101 • PH: (406) 252-6679 • FAX: (406) 252-4919

4 January 1995

HB 340

SENT VIA FAX MACHINE

Honorable Representative Tom Nelson
Helena, Montana

In Re: Change in Legislation

Dear Representative Nelson:

Our firm represents two of your constituents, Mike and Sandee Kandas. Mike indicated that he recently talked with you on the phone regarding proposing an amendment to existing statute to correct a loophole that he discovered the hard way. This has to do with the adoption laws and the requirements of consent for a natural parent who has been convicted of sexual assault on the children. The specific section is *MCA §40-8-111.* I am FAXing you a copy of that section for your information. The portion of the code which we are concerned about is contained in *(a)(i).* That particular paragraph indicates consent for adoption by a natural parent is not necessary if that parent has been adjudged guilty by a court of competent jurisdiction of assault on the child, as provided in *45-5-201*; endangering the welfare of children, concerning the child, as provided in *45-5-622*; or sexual abuse of children, toward the child, as provided in *45-5-625.* We wish to add another criminal section to the existing statute.

The natural father of Mike's step-children was convicted of sexual assault under *MCA §45-5-502,* which holds that a person who knowingly subjects another person to any sexual contact without consent commits the offense of sexual assault. Unfortunately, *45-5-502,* is not included within the subsections of *MCA §40-8-111.* It is very obvious that the crime that the natural father committed in this case was, in fact, worse than the crimes listed in *40-8-111,* but for whatever reason, that particular sexual assault section was not included. This created a loophole and the District Court Judge in Yellowstone County felt that his hands were tied. He indicated that since the legislature had specified which statutes did not require the consent of a natural father regarding sexual crimes against children, and because they had not specifically listed *45-5-502,* that the natural father's consent would have to be given to allow an adoption. The Court felt that this was a terrible position to be put in, but in the Judge's Order, he set forth that he did not view himself as a legislator and indicated that we should bring this to

someone's attention to close this loophole for the future. In this particular case, the natural father was charged by the County Attorney without any knowledge that the section that he was charging the father under would later affect an attempted adoption.

Both Mike and Sandee Kandas are willing to come to Helena and testify in support of this Bill if necessary. Likewise, I would be happy to send to you (with Mike and Sandee's permission) briefs that were written by both attorneys on this issue and a copy of the Court's Order.

If you have any questions, please give me a call. Thank you.

Very truly yours,

PETERSON and SCHOFIELD

Dane C. Schofield

Dane C. Schofield

DCS/ggg
cc: Mike and Sandee Kandas
e:ltr\kandas.nel

EXHIBIT 1
DATE 3-20-95
HB 340

(b) the investigation or home study required by 40-8-115 has been performed; and

(c) the parent has received counseling in accordance with 40-8-116.

(9) If the court finds that all requirements for adoptive placement have been met, the court may issue an order or schedule a hearing for the purpose of terminating parental rights and granting temporary custody to the prospective adoptive parents or it may issue a final decree if a petition for adoption has been filed under 40-8-121. The prospective adoptive parents shall file their petition to adopt within 30 days of the order.

(10) If the court finds that all requirements for the adoptive placement have not been met, the court may issue any order appropriate to protect the child, including granting temporary custody to the prospective adoptive parents or issuing a final decree if a petition for adoption has been filed under 40-8-121.

(11) The court shall send a copy of the final determination made by the court under this section to the central office of the department.

History: En. Sec. 11, Ch. 530, L. 1981; amd. Sec. 4, Ch. 1, Sp. L. 1981; amd. Sec. 1, Ch. 277, L. 1987; amd. Sec. 3, Ch. 18, L. 1989; amd. Sec. 1, Ch. 539, L. 1989; amd. Sec. 3, Ch. 683, L. 1991; amd. Sec. 1, Ch. 684, L. 1991.

40-8-110. Adoption services account. There is an adoption services account in the special revenue fund. The fees collected by the department of family services under 40-8-109 must be deposited into this account and may be used by the department for adoption service.

History: En. Sec. 2, Ch. 539, L. 1989.

Cross-References

State treasury fund structure, 17-2-102.

40-8-111. Consent required for adoption. (1) An adoption of a child may be decreed when there have been filed written consents to adoption executed by:

(a) both parents, if living, or the surviving parent of a child, provided that consent is not required from a father or mother:

(i) adjudged guilty by a court of competent jurisdiction of assault on the child, as provided in 45-5-201; endangering the welfare of children, concerning the child, as provided in 45-5-622; or sexual abuse of children, toward the child, as provided in 45-5-625;

(ii) who has been judicially deprived of the custody of the child on account of cruelty or neglect toward the child;

(iii) who has, in the state of Montana or in any other state of the United States, willfully abandoned the child, as defined in 41-3-102(8)(d);

(iv) who has caused the child to be maintained by any public or private children's institution, charitable agency, or any licensed adoption agency or the department of family services of the state of Montana for a period of 1 year without contributing to the support of the child during said period, if able;

(v) if it is proven to the satisfaction of the court that the father or mother, if able, has not contributed to the support of the child during a period of 1 year before the filing of a petition for adoption; or

(vi) whose parental rights have been judicially terminated;

(b) the legal guardian of the child if both parents are dead or if the rights of the parents have been terminated by judicial proceedings and such guar-

SANDI BURNS, M.A., M.C.
PSYCHOTHERAPIST
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SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 2
DATE 3-20-95
BILL NO. HB 340

January 27, 1995

Re: McPherson-Kandas children
Adoption laws

To Whom it may concern:

I have seen two children for treatment who were adopted by John McPherson while married to the children's mother. Mr. McPherson is currently in Montana State Prison and charged with "sexual assault" of two of his children and several other neighbor children.

The children's mother is now remarried and wants to have her three children adopted by her current husband. However, due to the wording of the law, they are not able to do this. I understand the wording of the law states "sexual abuse" and Mr. McPherson was charged with "sexual assault."

Although I am not an attorney, I have been treating victims of sexual abuse since 1978, seeing well over 5000. If, a perpetrator was ever charged for the sexual abuse of children in the state of Montana, they were either charged with "Sexual Assault" or "Sexual Intercourse without consent." These have been the "criminal" charges or felonies. However, very few are charged in civil court with "sexual child abuse." Thus, it appears as a wording in the law, as I understand it from Mrs. Kandas.

I have seen all three of Mrs. Kandas children after the sexual abuses or "assaults" by Mr. John McPherson. The children are no longer involved with him and are saying they desire to be adopted by Mr. Kandas who they currently see as their father.

Sincerely,

Sandi Burns

Sandi Burns

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 3
DATE 3-20-95
BILL NO. HB 340

Amendments to House Bill No. 340
Third Reading Copy

Requested by Senator Bartlett
For the Committee on

Prepared by Greg Petesch
March 18, 1995

1. Title, line 9.
Following: line 8
Insert: "PROVIDING FOR TERMINATION OF PARENTAL RIGHTS IN CERTAIN INSTANCES;"

2. Page 2, line 17.
Insert: "

NEW SECTION. **Section 2. Termination of parental rights -- felony involving sexual intercourse.** If a person is convicted of a felony in which sexual intercourse occurred or if a minor is adjudicated a delinquent youth because of an act that, if committed by an adult, would be a felony in which sexual intercourse occurred and, as a result of the sexual intercourse, a child is born, the court may terminate the offender's parental rights to the child at any time after the conviction or adjudication.

NEW SECTION. **Section 3. {standard} Codification instruction.** [Section 2] is intended to be codified as an integral part of Title 41, chapter 3, part 6, and the provisions of Title 41, chapter 3, part 6, apply to [section 2].
"

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 4
DATE 3-20-95
BILL NO. HB 444

Amendments to House Bill No. 444
Third Reading Copy (blue)

Requested by Senator Bartlett
For the Committee on Judiciary

Prepared by Valencia Lane
March 20, 1995

1. Title, line 8.
Following: "CRIME;"
Insert: "REVISING THE OFFENSE OF CUSTODIAL INTERFERENCE;"
Following: "40-4-217,"
Strike: "AND"
Following: "40-4-219,"
Insert: "AND 45-5-304,"

2. Page 5, line 15.
Insert: "**Section 4.** Section 45-5-304, MCA, is amended to read:

"**45-5-304. Custodial interference.** (1) A person commits the offense of custodial interference if, knowing that ~~he~~ the person has no legal right to do so the person:

(a) ~~he~~ takes, entices, or withholds from lawful custody any child, incompetent person, or other person entrusted by authority of law to the custody of another person or institution;

(b) prior to the entry of a court order determining custodial rights, ~~he~~ takes, entices, or withholds any child from the other parent where the action manifests a purpose to substantially deprive that parent of parental rights; or

(c) ~~he~~ is one of two persons who has joint custody of a child under a court order and he takes, entices, or withholds the child from the other where the action manifests a purpose to substantially deprive the other parent of parental rights.

(2) A person convicted of the offense of custodial interference shall be imprisoned in the state prison for any term not to exceed 10 years or be fined an amount not to exceed $50,000, or both.

(3) ~~A~~ With respect to the first alleged commission of the offense only, a person who has not left the state does not commit an offense under this section if ~~he~~ the person voluntarily returns such person to lawful custody prior to arraignment. ~~A~~ With respect to the first alleged commission of the offense only, a person who has left the state does not commit an offense under this section if ~~he~~ the person voluntarily returns such person to lawful custody prior to arrest.""

{*Internal References to 45-5-304: None.*}

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 5
DATE 3-20-95
BILL NO. HB 444

MEMO TO: Senate Juditiary Committee

FROM: Rob and Renae Mahr

DATE: March 8, 1995

SUBJECT: House Bill 444, further protecting the children in custody

As you can see by House Bill 444, a very important aspect is left out of the modification and visitation statutes. If the person convicted of any of the crimes listed in the subsections is any other than the parent, the kids are left with no protection.

These laws should include any other person (not only adults, but ANY criminal defined in the subsections of any age) in contact with the child or children. Step-parents, relatives, live-in boy- or girl-friends, and caregivers convicted of these crimes need to be held as responsible as the parents. The simple changing of these two statutes to include all parties involved in the day to day lives of children will immediately protect children without a total revamping of the system.

We are personally involved in this because Rob's ex-wife married a sex offender just days after she was awarded custody of their four year old daughter. The information of the new step-father's sexual deviance and other theraputic needs was kept from us. We were unaware of his problems until almost a year after their marriage. Now, it will be another year before this gets in front of a judge. Some allowance must be made to protect the children who are so vulnerable and precious. This bill will require the judges to hear the cases in which time is such an important element.

We would be happy to talk to anyone who has questions about this bill. It will probably be too late for us as the Judge has already allowed Rob's ex-wife and her sex-offender husband a year of free reign before our hearing date. If these laws are changed, we hope it will include any case in front of a judge at the time it is passed.

Sincerely,

Rob and Renae Mahr

Rob and Renae Mahr
202 Legget
Dillon, MT 59725
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OR
3716 Wylie Drive
Helena, MT 59601
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SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 6
DATE 3-20-95
BILL NO. HB 547

already adopted by Jud Comm

Amendments to House Bill No. 547
Third Reading Copy (blue)

For the Committee on Judiciary

Prepared by Valencia Lane
March 7, 1995

1. Title, line 5.
Following: "CRIMINALS;"
Insert: "ALLOWING THE SENTENCING ORDER TO INCORPORATE BY REFERENCE RULES SETTING CONDITIONS OF PROBATION, PAROLE, OR SUPERVISED RELEASE;"

2. Page 1, line 14.
Following: "society."
Insert: "If the sentencing judge incorporates by reference in the sentencing order rules of the department of corrections and human services or the board of pardons setting conditions of probation, parole, or supervised release with which the offender is required to comply, the incorporation by reference constitutes a specific enumeration of the conditions for purposes of this section."

3. Page 3, line 27.
Following: "**Applicability**"
Insert: "-- retroactive applicability"

4. Page 3, line 30.
Insert: "(3) [Section 1] applies retroactively, within the meaning of 1-2-109."

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 7
DATE 3-20-95
BILL NO. HB 547

Amendments to House Bill No. 547
Third Reading Copy (blue)

Requested by Senator Baer
For the Committee on Judiciary

Prepared by Valencia Lane
March 15, 1995

1. Page 1, line 23.
Following: second "person"
Insert: "purposely or knowingly purchases or possesses a firearm after the person"

2. Page 1, line 24 through page 2, line 9.
Following: first "convicted of" on line 24
Strike: remainder of line 24 through "(m)" on page 2, line 9
Insert: ": (a)"
Renumber: subsequent subsection

3. Page 2, line 9.
Following: "felony"
Strike: "not specifically listed in this subsection (1)"

4. Page 2, line 12.
Strike: "specifically listed in this subsection (1)"
Insert: "that when committed in Montana is subject to an additional sentence under 46-18-221"

5. Page 2, line 17.
Strike: "listed"
Insert: "referred to"

6. Page 3, line 4.
Strike: "listed"
Insert: "referred to"

7. Page 3, line 28.
Strike: "listed"
Insert: "referred to"

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 8
DATE 3-20-95
BILL NO. HB 160

Amendments to House Bill No. 160
Third Reading Copy (blue)

Requested by Senator Holden
For the Committee on Judiciary

Prepared by Valencia Lane
March 17, 1995

1. Title, line 7.
Strike: "PROVIDING FOR PROSECUTION OF FEDERAL EMPLOYEES VIOLATING THIS ACT;"

2. Page 1, line 23.
Following: "HOURS'"
Strike: "WRITTEN"

3. Page 2, line 14.
Following: "HOURS'"
Strike: "WRITTEN"

4. Page 2, line 15.
Following: "must"
Strike: "include a written statement, under oath, describing"
Insert: "describe"

5. Page 2, line 19.
Following: "(3)"
Strike: "(a)"
Following: "THE"
Strike: "WRITTEN"

6. Page 2, line 21.
Strike: "(i)"
Insert: "(a)"
Renumber: subsequent subsections

7. Page 2, lines 27 through 30.
Strike: subsection (b) in its entirety

8. Page 3, lines 1 through 14.
Strike: section 3 in its entirety
Renumber: subsequent sections

Amendments to House Bill 160
House Third Reading Copy
March 18, 1995

Prepared by Gary S. Marbut, MSSA

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 9
DATE 3-20-95
BILL NO. HB 160

1. On Page 1, line 23.
Following: "WRITTEN"
Insert: ", facsimile or telephonic"

2. On Page 2, line 14.
Following: "WRITTEN"
Insert: ", facsimile or telephonic"

3. On Page 2, line 17.
Following: "TAKE"
Insert: "any action he deems"

4. Page 2, line 17.
Following: "APPROPRIATE"
Strike: "ACTION"

5. Page 2, line 19.
Following: "WRITTEN"
Insert: ", facsimile or telephonic"

6. Page 2, line 27.
Following: "WRITTEN"
Insert: ", facsimile or telephonic"

7. Page 2, line 27.
Following: "NOTICE"
Strike: "may be in letter form, either typed or handwritten, but"

8. Page 2, line 28.
Following: "ACKNOWLEDGED"
Strike: "with the original signature of"
Insert: "and logged in department records by"

9. Page 3, line 6.
Following: "ANY"
Strike: "CRIME ARISING FROM"
Insert: "applicable criminal offenses in Title 45 associated with"

10. Page 3, line 6.
Following: "CONDUCT."
Strike: all of the following sentence.

End of amendments

Effects of Amendments to HB 160

Amendments 1, 2, 5, 6, 7, 8, allow the notification specified in HB 160 to be accomplished with a fax or a phone call, as suggested by Senator Holden during the Senate Judiciary Committee hearing.

Amendments 3 and 4 clarify that it is up to the judgment of the Attorney General what he may do to protect the rights of the people of the county. He may do whatever he chooses to do. This is to satisfy the expressed concerns of Mr. John Connor who testified during hearing that HB 160 was unclear about what the Attorney General is supposed to do to protect the people of the county. The clear answer, with these amendments, is that it is whatever the AG wants to do. He is given broad discretion.

Amendments 9 and 10 address further concerns expressed by Mr. Connor. During opponents testimony, Mr Connor testified that no criminal acts or penalties were specified, and that for this reason HB 160 was unacceptably vague. These amendments would clarify that there could be prosecutions for any violations of existing Montana criminal code that might be committed (such as assault or intimidation, for example) as a part of violating the provisions of HB 160. These criminal laws have been on the books for a long time, and are thoroughly fleshed out with proper language, historical precedent, and case law.

Together, these amendments would seem to remove many of the objections and concerns expressed by opponents. With these amendments, HB 160 would only formalize what is currently considered to be "best management practice" for law enforcement. Opponents testified that notification of sheriffs of federal enforcement activity within the sheriff's jurisdiction is current practice with hardly any exceptions, and is currently required by the ARM. Therefore, the amended version of HB 160 should only apply to those rare exceptions (according to HB 160 opponents) where federal activities do not conform to federal standards of practice and the exitsting ARM.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 10-
DATE 3-20-95
BILL NO. HB 160

(b) When an investigation is performed by a state agency at the request and under the direction of a federal law enforcement agency, the responsibility for and decision regarding notification to other authorities shall be made by the federal agent in charge of the investigation. When joint federal and state investigations are conducted, the liaison officer for the state agency will request in writing that the federal agency notify local law enforcement officials that the investigation is in progress, and document the response to this notification.

(c) When the subject of the investigation is the chief law enforcement officer of the agency or public official and a request for investigative assistance has been received pursuant to section 44-2-115(1), MCA, the notification procedure described in ARM 23.2.203 will apply. (History: Sec. 2-15-112, MCA; IMP, Sec. 44-2-115, MCA; NEW, 1992 MAR p. 2752, Eff. 11/13/92.)

23.2.203 INTERNAL INVESTIGATION (1) For a state agency to initiate an internal investigation of another law enforcement agency or public official pursuant to section 44-2-115, MCA, the following procedures must be followed:

(a) A written request must be received and approved by the attorney general or a designated representative. The request must be from a chief of police, sheriff or county attorney within the jurisdiction where the alleged offense(s) occurred.

(b) The request must describe the reasonable facts that led the official to believe a criminal offense has been or is being committed.

(c) The request must name a local representative to serve as the liaison officer.

(2) The agent shall contact only the liaison officer designated in the request from the law enforcement official.

(3) If the investigation concerns the supervisor of a law enforcement agency or the county attorney, it will be the responsibility of the attorney general or his designated representative to contact the affected officer when the investigation is completed, and summarize the action the state agency intends to take based on the investigation. (History: Sec. 2-15-112, MCA; IMP, Sec. 44-2-115, MCA; NEW, 1992 MAR p. 2752, Eff. 11/13/92.)

23.2.204 COORDINATION (1) Local, state, and federal law enforcement agencies will make every good faith effort to notify the appropriate law enforcement agencies concerning active investigations.

(2) Notification to the appropriate law enforcement agencies is intended to avoid duplication of effort and to ensure maximum coordination among various law enforcement agencies in the state of Montana. (History: Sec. 2-15-112, MCA; IMP, Sec. 44-2-115, MCA; NEW, 1992 MAR p. 2752, Eff. 11/13/92.)

23.2.205 COMPLAINT REVIEW (1) Whenever a law enforcement agency concludes that a state agency has actively conducted an investigation within their jurisdiction without proper notification, a written complaint may be forwarded to the attorney general for referral to the law enforcement advisory council. Whenever a complaint is received, the attorney general or a designated representative will request a written response from the agency involved in the complaint. The law enforcement advisory council will review the response, determine if the action constituted a violation of investigative protocol, and advise the attorney general.

(2) If the advisory council determines there has been a violation of investigative protocol, the attorney general or a designated representative shall act to ensure future compliance with the administrative rules. (History: Sec. 2-15-112, MCA; IMP, Sec. 44-2-115, MCA; NEW, 1992 MAR p. 2752, Eff. 11/13/92.)

DATE 3-20-95

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: HJR 27, HB 444, HB 491, HB 340

< ■ > PLEASE PRINT < ■ >

Name	Representing	Bill No.	Check One: Support	Check One: Oppose
W James Kembel	City of Billings	HB491		X
Michael Kandas	Self	HB340	✓	
Sandee Kandas	Self	HB340	✓	
Jerry Williams	Montana Police Protective Assn.	HB491		X
Sharon L Bakersen	Macem	HB340	X	
Sharon L Bakersen	MACoM	HB444	X	
MARY ALICE COOK	ADV. FOR MTs CHILDREN	HB 340 HB 444	✓	
Klaus Sitte	Mont. Legal Services Assn	HB444	✓	
Jim Obenhofer	MT Chiefs of Police	HB491		X
Lorna Frank	MT Farm Bureau	HJ27	✓	
Troy McGee	Mont Police Assoc	491		X
William J Ware	ME Asso of Chiefs of Police MACOP - Chiefs	491		X

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

REGISTER.F10